

**CS FOR SENATE BILL NO. 173(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

**BY SENATOR MICCICHE**

**Offered: 2/19/18**

**Referred: Judiciary**

**Sponsor(s): SENATOR MICCICHE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the liability of a person for the release of certain pesticides from a**  
2 **wood utility pole."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 09.65 is amended by adding a new section to read:

5 **Sec. 09.65.243. Liability of persons for the application of pesticides on a**  
6 **utility pole.** (a) Notwithstanding AS 46.03.822(a), a person is not subject to liability  
7 under AS 46.03.822 for costs or damages, as defined in AS 46.03.822(m), for the  
8 release of a pesticide registered under 7 U.S.C. 136-136y (Federal Insecticide,  
9 Fungicide, and Rodenticide Act) if

10 (1) the release resulted during the installation, use, or removal of a  
11 wood utility pole treated with the registered pesticide; and

12 (2) the use of the utility pole is or was intended to provide a utility  
13 service in the state.

14 (b) For purposes of this section, "person" has the meaning given in  
15 AS 46.03.900.

1 \* **Sec. 2.** AS 46.03.822(a) is amended to read:

2 (a) Notwithstanding any other provision or rule of law and subject only to the  
 3 defenses set out in (b) of this section, the exception set out in (i) of this section, the  
 4 **exceptions** [EXCEPTION] set out in AS 09.65.240 **and 09.65.243**, and the limitation  
 5 on liability provided under AS 46.03.825, the following persons are strictly liable,  
 6 jointly and severally, for damages, for the costs of response, containment, removal, or  
 7 remedial action incurred by the state, a municipality, or a village, and for the  
 8 additional costs of a function or service, including administrative expenses for the  
 9 incremental costs of providing the function or service, that are incurred by the state, a  
 10 municipality, or a village, and the costs of projects or activities that are delayed or lost  
 11 because of the efforts of the state, the municipality, or the village, resulting from an  
 12 unpermitted release of a hazardous substance or, with respect to response costs, the  
 13 substantial threat of an unpermitted release of a hazardous substance:

14 (1) the owner of, and the person having control over, the hazardous  
 15 substance at the time of the release or threatened release; this paragraph does not apply  
 16 to a consumer product in consumer use;

17 (2) the owner and the operator of a vessel or facility, from which there  
 18 is a release, or a threatened release that causes the incurrence of response costs, of a  
 19 hazardous substance;

20 (3) any person who at the time of disposal of any hazardous substance  
 21 owned or operated any facility or vessel at which the hazardous substances were  
 22 disposed of, from which there is a release, or a threatened release that causes the  
 23 incurrence of response costs, of a hazardous substance;

24 (4) any person who by contract, agreement, or otherwise arranged for  
 25 disposal or treatment, or arranged with a transporter for transport for disposal or  
 26 treatment, of hazardous substances owned or possessed by the person, other than  
 27 domestic sewage, or by any other party or entity, at any facility or vessel owned or  
 28 operated by another party or entity and containing hazardous substances, from which  
 29 there is a release, or a threatened release that causes the incurrence of response costs,  
 30 of a hazardous substance;

31 (5) any person who accepts or accepted any hazardous substances,

1 other than refined oil, for transport to disposal or treatment facilities, vessels or sites  
2 selected by the person, from which there is a release, or a threatened release that  
3 causes the incurrence of response costs, of a hazardous substance.