

1 SB344
2 165450-2
3 By Senator Whatley
4 RFD: Judiciary
5 First Read: 07-APR-15

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to civil immunity; to amend Sections
12 6-5-332.1 and 6-5-332.2, Code of Alabama 1975; to clarify that
13 a response action contractor who responds to a hazardous
14 materials discharge is entitled to civil immunity protection,
15 even though he or she may receive compensation for providing
16 response services; and to clarify that gasoline is included in
17 the definition of oil with regard to civil immunity for
18 persons responding to an oil spill.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Sections 6-5-332.1 and 6-5-332.2, Code of
21 Alabama 1975, are amended to read as follows:

22 "§6-5-332.1.

23 "(a) As used in this section, the following words
24 and terms shall have meanings respectively ascribed to them by
25 this section:

26 "(1) DISCHARGE. Includes leakage, seepage, or other
27 release.

1 (2) HAZARDOUS MATERIALS. Includes all materials and
2 substances which are now or hereafter designated or defined as
3 hazardous by any state or federal law or by the regulations of
4 any state or federal government agency.

5 "(3) PERSON. Includes any qualified individual,
6 partnership, corporation, association, or other entity. A
7 qualified individual is one who is trained in the handling of
8 hazardous materials.

9 "(b) Notwithstanding any provision of law to the
10 contrary, no person, including a response action contractor as
11 defined in Section 22-35-3, who provides assistance or advice
12 in mitigating or attempting to mitigate the effects of an
13 actual or threatened discharge of hazardous materials, or in
14 preventing, cleaning up, or disposing of, or in attempting to
15 prevent, clean up or dispose of any such discharge, shall be
16 subject to civil liabilities or penalties of any type.

17 "(c) The immunities provided in subsection (b) of
18 this section shall not apply to any person:

19 ~~"(1) Whose~~ whose act or omission acts or omissions
20 proximately caused, in whole or in part, the original actual
21 or threatening discharge, ~~or~~ or any additional or further
22 actual or threatening discharge.

23 ~~"(2) Who receives compensation other than~~
24 ~~reimbursement for out-of-pocket expenses for its services in~~
25 ~~rendering such assistance or advice.~~

26 "(d) Nothing in subsection (b) of this section shall
27 be construed to limit or otherwise affect the liability of any

1 person for damages resulting from such person's gross
2 negligence, or from such person's reckless, wanton, or
3 intentional misconduct.

4 ~~"(e) The provisions of this section shall be~~
5 ~~construed in pari materia with all laws or parts of laws~~
6 ~~providing protection from civil liability, or granting~~
7 ~~immunity, for persons performing other acts of public~~
8 ~~assistance or rescue. (e) Nothing in subsection (b) of this~~
9 ~~section shall be construed to limit or otherwise affect the~~
10 ~~liability of any product manufacturer or seller for damages~~
11 ~~where such manufacturer or seller's product proximately~~
12 ~~caused, in whole or in part, the original actual or~~
13 ~~threatening discharge; any additional or further actual or~~
14 ~~threatening discharge; or the additional or further migration~~
15 ~~of the original actual discharge.~~

16 "§6-5-332.2.

17 "(a) This section shall be known and may be cited as
18 the Alabama Act Regarding Liability for Persons Responding to
19 Oil Spills.

20 "(b) For the purposes of this section, the following
21 terms shall have the following meanings:

22 "(1) DAMAGES. Damages of any kind for which
23 liability may exist under the laws of this state resulting
24 from, arising out of, or related to the discharge, or
25 threatened discharge of oil.

26 "(2) DISCHARGE. Any emission (other than natural
27 seepage), intentional or unintentional, and includes, but is

1 not limited to, spilling, leaking, pumping, pouring, emitting,
2 emptying, or dumping.

3 "(3) FEDERAL ON-SCENE COORDINATOR. The federal
4 official predesignated by the U.S. Environmental Protection
5 Agency or the U.S. Coast Guard to coordinate and direct
6 federal responses under subpart D of the National Contingency
7 Plan, or the official designated by the lead agency to
8 coordinate and direct removal under subpart E, of the National
9 Contingency Plan.

10 "(4) NATIONAL CONTINGENCY PLAN. The National
11 Contingency Plan prepared and published under Section 311(d)
12 of the Federal Water Pollution Control Act [33 U.S.C.
13 1321(d)], as amended by the Oil Pollution Act of 1990, Pub. L.
14 No. 101-380, 104 Stat. 484 (1990).

15 "(5) OIL. Oil of any kind or in any form, including,
16 but not limited to, petroleum, fuel oil, gasoline, sludge, oil
17 refuse, and oil mixed with wastes other than dredged spoil.

18 "(6) PERSON. An individual, corporation,
19 partnership, association, state, municipality, commission, or
20 political subdivision of a state, or any interstate body.

21 "(7) REMOVAL COSTS. The costs of removal that are
22 incurred after a discharge of oil has occurred or, in any case
23 in which there is a substantial threat of a discharge of oil,
24 the costs to prevent, minimize, or mitigate oil pollution from
25 such an incident.

26 "(8) RESPONSIBLE PARTY.

1 "a. Vessels. In the case of a vessel, any person
2 owning, operating, or demise chartering the vessel.

3 "b. Onshore facilities. In the case of an onshore
4 facility (other than a pipeline), any person owning or
5 operating the facility, except a federal agency, state,
6 municipality, commission, or political subdivision of a state,
7 or any interstate body, that as owner, transfers possession
8 and right to use the property to another person by lease,
9 assignment, or permit.

10 "c. Offshore facilities. In the case of an offshore
11 facility (other than a pipeline or a deepwater port licensed
12 under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.),
13 the lessee or permittee of the area in which the facility is
14 located or the holder of a right of use and easement granted
15 under applicable state law or the Outer Continental Shelf
16 Lands Act (43 U.S.C. 1301-1356) for the area in which the
17 facility is located (if the holder is a different person than
18 the lessee or permittee), except a federal agency, state,
19 municipality, commission or political subdivision of a state,
20 or any interstate body, that as owner, transfers possession
21 and right to use the property to another person by lease,
22 assignment, or permit.

23 "d. Deepwater ports. In the case of a deepwater port
24 licensed under the Deepwater Port Act of 1974 (33 U.S.C.
25 1501-1524), the licensee.

26 "e. Pipelines. In the case of a pipeline, any person
27 owning or operating the pipeline.

1 "f. Abandonment. In the case of an abandoned vessel,
2 onshore facility, deepwater port, pipeline, or offshore
3 facility, the persons who would have been responsible parties
4 immediately prior to the abandonment of the vessel or
5 facility.

6 "(c) (1) Notwithstanding any other provision of law,
7 a person, including a response action contractor as defined in
8 Section 22-35-3, is not liable for removal costs or damages
9 which result from actions taken or omitted to be taken in the
10 course of rendering care, assistance, or advice consistent
11 with the National Contingency Plan or as otherwise directed by
12 the Federal On-Scene Coordinator or by any state official with
13 responsibility for oil spill response.

14 "(2) Subdivision (1) of this subsection does not
15 apply:

16 "a. to a responsible party;

17 "b. with respect to personal injury or wrongful
18 death; or

19 "c. if the person is grossly negligent or engages in
20 wanton or willful misconduct; or

21 "d. if the person's act(s) or omission(s)
22 proximately caused, in whole or in part, the original actual
23 or threatening discharge; or any additional or further actual
24 or threatening discharge.

25 "(3) A responsible party is liable for any removal
26 costs and damages that another person is relieved of under
27 subdivision (1).

1 "(4) Nothing in this section affects the liability
2 of a responsible party for oil spill response under state
3 law."

4 Section 2. This act shall become effective on the
5 first day of the third month following its passage and
6 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate committee on Judiciary.....	07-APR-15
Read for the second time and placed on the calen- dar 1 amendment.....	30-APR-15
Read for the third time and passed as amended	19-MAY-15

Patrick Harris
Secretary