

5418

2011-2012 Regular Sessions

I N S E N A T E

May 19, 2011

Introduced by Sen. GRISANTI -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the navigation law, in relation to liability limitation agreements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 181 of the navigation law, as
2 amended by chapter 712 of the laws of 1989, is amended to read as
3 follows:
4 1. (A) Any person who has discharged petroleum shall be strictly
5 liable, without regard to fault, for all cleanup and removal costs and
6 all direct and indirect damages, no matter by whom sustained, as defined
7 in this section, UNLESS THE LIABILITY LIMITATION AS DESCRIBED UNDER
8 PARAGRAPH (B) OF THIS SUBDIVISION APPLIES. In addition to cleanup and
9 removal costs and damages, any such person who is notified of such
10 release and who did not undertake relocation of persons residing in the
11 area of the discharge in accordance with paragraph (c) of subdivision
12 seven of section one hundred seventy-six of this article, shall be
13 liable to the fund for an amount equal to two times the actual and
14 necessary expense incurred by the fund for such relocation pursuant to
15 section one hundred seventy-seven-a of this article.
16 (B) (I) ANY PERSON WHO AGREES TO REMEDIATE THE DISCHARGE TO THE SATIS-
17 FACTION OF THE DEPARTMENT, AND IN CONFORMANCE WITH THIS ARTICLE, SHALL
18 BE ENTITLED TO RECEIVE LIABILITY LIMITATION. SUCH AGREEMENT SHALL BE
19 CALLED THE LIABILITY LIMITATION AGREEMENT AND SHALL BE WRITTEN AND
20 EXECUTED BY BOTH THE DEPARTMENT AND SUCH PERSON. AFTER EXECUTION OF THE
21 LIABILITY LIMITATION AGREEMENT, SUCH PERSON SHALL NOT BE LIABLE TO THE
22 STATE UPON ANY STATUTORY OR COMMON LAW CAUSE OF ACTION, ARISING OUT OF
23 THE PRESENCE OF ANY CONTAMINATION IN, ON, OR EMANATING FROM THE SITE
24 THAT WAS THE SUBJECT OF THE LIABILITY LIMITATION, EXCEPT THAT SUCH
25 PERSON SHALL NOT RECEIVE A RELEASE FOR NATURAL RESOURCE DAMAGES THAT MAY

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 BE AVAILABLE UNDER LAW. THE LIABILITY LIMITATION SHALL APPLY TO ALL
2 SUCCESSORS IN OWNERSHIP OF THE PROPERTY AND TO ALL PERSONS WHO LEASE THE
3 PROPERTY OR WHO ENGAGE IN OPERATIONS ON THE PROPERTY, PROVIDED THAT SUCH
4 PERSONS ACT WITH DUE CARE AND IN GOOD FAITH TO ADHERE TO THE REQUIRE-
5 MENTS OF THE LIABILITY LIMITATION AGREEMENT.

6 (II) A LIABILITY LIMITATION AGREEMENT AND THE PROTECTIONS IT AFFORDS
7 SHALL NOT APPLY TO ANY DISCHARGE THAT OCCURS SUBSEQUENT TO THE EXECUTION
8 OF THE LIABILITY LIMITATION AGREEMENT, NOR SHALL A LIABILITY LIMITATION
9 AGREEMENT AND THE PROTECTIONS IT AFFORDS RELIEVE ANY PERSON OF THE OBLI-
10 GATIONS TO COMPLY IN THE FUTURE WITH LAWS AND REGULATIONS. THE STATE
11 NONETHELESS SHALL RESERVE ALL OF ITS RIGHTS CONCERNING, AND SUCH LIABIL-
12 ITY LIMITATION SHALL NOT EXTEND TO, ANY FURTHER INVESTIGATION AND/OR
13 REMEDIATION THE DEPARTMENT DEEMS NECESSARY DUE TO FRAUD, NONCOMPLIANCE
14 WITH THE TERMS THAT FORMED THE LIABILITY LIMITATION AGREEMENT, OR A
15 WRITTEN FINDING BY THE DEPARTMENT THAT A CHANGE IN AN ENVIRONMENTAL
16 STANDARD, FACTOR, OR CRITERION UPON WHICH THE LIABILITY LIMITATION
17 AGREEMENT WAS BASED WOULD RENDER REMEDIATION ACTIVITIES NO LONGER
18 PROTECTIVE OF PUBLIC HEALTH OR THE ENVIRONMENT. NOTHING IN THIS SECTION
19 SHALL AFFECT THE LIABILITY OF THE PERSON RESPONSIBLE FOR SUCH PERSON'S
20 OWN ACTS OR OMISSIONS CAUSING WRONGFUL DEATH OR PERSONAL INJURY. NOTHING
21 IN THIS SECTION SHALL AFFECT THE LIABILITY OF ANY PERSON WITH RESPECT TO
22 ANY CIVIL ACTION BROUGHT BY A PARTY OTHER THAN THE STATE. THE PROVISIONS
23 OF THIS SECTION SHALL NOT AFFECT AN ACTION OR A CLAIM, INCLUDING A STAT-
24 UTORY OR COMMON LAW CLAIM FOR CONTRIBUTION OR INDEMNIFICATION, THAT SUCH
25 PERSON HAS OR MAY HAVE AGAINST A THIRD PARTY.

26 S 2. This act shall take effect immediately.