
HOUSE BILL 1904

State of Washington

53rd Legislature

1993 Regular Session

By Representatives Rayburn and Lemmon

Read first time 02/15/93. Referred to Committee on Environmental Affairs.

1 AN ACT Relating to an exemption from liability for counties and
2 cities under chapter 70.105D RCW; and amending RCW 70.105D.040.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 70.105D.040 and 1989 c 2 s 4 are each amended to read
5 as follows:

6 (1) Except as provided in subsection (3) of this section, the
7 following persons are liable with respect to a facility:

8 (a) The owner or operator of the facility;

9 (b) Any person who owned or operated the facility at the time of
10 disposal or release of the hazardous substances;

11 (c) Any person who owned or possessed a hazardous substance and who
12 by contract, agreement, or otherwise arranged for disposal or treatment
13 of the hazardous substance at the facility, or arranged with a
14 transporter for transport for disposal or treatment of the hazardous
15 substances at the facility, or otherwise generated hazardous wastes
16 disposed of or treated at the facility;

17 (d) Any person (i) who accepts or accepted any hazardous substance
18 for transport to a disposal, treatment, or other facility selected by
19 such person from which there is a release or a threatened release for

1 which remedial action is required, unless such facility, at the time of
2 disposal or treatment, could legally receive such substance; or (ii)
3 who accepts a hazardous substance for transport to such a facility and
4 has reasonable grounds to believe that such facility is not operated in
5 accordance with chapter 70.105 RCW; and

6 (e) Any person who both sells a hazardous substance and is
7 responsible for written instructions for its use if (i) the substance
8 is used according to the instructions and (ii) the use constitutes a
9 release for which remedial action is required at the facility.

10 (2) Each person who is liable under this section is strictly
11 liable, jointly and severally, for all remedial action costs and for
12 all natural resource damages resulting from the releases or threatened
13 releases of hazardous substances. The attorney general, at the request
14 of the department, is empowered to recover all costs and damages from
15 persons liable therefor.

16 (3) The following persons are not liable under this section:

17 (a) Any person who can establish that the release or threatened
18 release of a hazardous substance for which the person would be
19 otherwise responsible was caused solely by:

20 (i) An act of God;

21 (ii) An act of war; or

22 (iii) An act or omission of a third party (including but not
23 limited to a trespasser) other than (A) an employee or agent of the
24 person asserting the defense, or (B) any person whose act or omission
25 occurs in connection with a contractual relationship existing, directly
26 or indirectly, with the person asserting this defense to liability.
27 This defense only applies where the person asserting the defense has
28 exercised the utmost care with respect to the hazardous substance, the
29 foreseeable acts or omissions of the third party, and the foreseeable
30 consequences of those acts or omissions;

31 (b) Any person who is an owner, past owner, or purchaser of a
32 facility and who can establish by a preponderance of the evidence that
33 at the time the facility was acquired by the person, the person had no
34 knowledge or reason to know that any hazardous substance, the release
35 or threatened release of which has resulted in or contributed to the
36 need for the remedial action, was released or disposed of on, in, or at
37 the facility. This subsection (b) is limited as follows:

38 (i) To establish that a person had no reason to know, the person
39 must have undertaken, at the time of acquisition, all appropriate

1 inquiry into the previous ownership and uses of the property,
2 consistent with good commercial or customary practice in an effort to
3 minimize liability. Any court interpreting this subsection (b) shall
4 take into account any specialized knowledge or experience on the part
5 of the person, the relationship of the purchase price to the value of
6 the property if uncontaminated, commonly known or reasonably
7 ascertainable information about the property, the obviousness of the
8 presence or likely presence of contamination at the property, and the
9 ability to detect such contamination by appropriate inspection;

10 (ii) The defense contained in this subsection (b) is not available
11 to any person who had actual knowledge of the release or threatened
12 release of a hazardous substance when the person owned the real
13 property and who subsequently transferred ownership of the property
14 without first disclosing such knowledge to the transferee;

15 (iii) The defense contained in this subsection (b) is not available
16 to any person who, by any act or omission, caused or contributed to the
17 release or threatened release of a hazardous substance at the facility;

18 (c) Any natural person who uses a hazardous substance lawfully and
19 without negligence for any personal or domestic purpose in or near a
20 dwelling or accessory structure when that person is: (i) A resident of
21 the dwelling; (ii) a person who, without compensation, assists the
22 resident in the use of the substance; or (iii) a person who is employed
23 by the resident, but who is not an independent contractor;

24 (d) Any person who, for the purpose of growing food crops, applies
25 pesticides or fertilizers without negligence and in accordance with all
26 applicable laws and regulations;

27 (e) A county or city that, subsequent to the disposal or release of
28 the hazardous substance, acquired the facility through any involuntary
29 transfer or acquisition, or through the exercise of eminent domain
30 authority by purchase or condemnation in furtherance of a public works
31 project necessary for the protection of the public health and safety.

32 (4) There may be no settlement by the state with any person
33 potentially liable under this chapter except in accordance with this
34 subsection.

35 (a) The attorney general may agree to a settlement with any
36 potentially liable person only if the department finds, after public
37 notice and hearing, that the proposed settlement would lead to a more
38 expeditious cleanup of hazardous substances in compliance with cleanup
39 standards under RCW 70.105D.030(2)(d) and with any remedial orders

1 issued by the department. Whenever practicable and in the public
2 interest, the attorney general may expedite such a settlement with
3 persons whose contribution is insignificant in amount and toxicity.

4 (b) A settlement agreement under this subsection shall be entered
5 as a consent decree issued by a court of competent jurisdiction.

6 (c) A settlement agreement may contain a covenant not to sue only
7 of a scope commensurate with the settlement agreement in favor of any
8 person with whom the attorney general has settled under this section.
9 Any covenant not to sue shall contain a reopener clause which requires
10 the court to amend the covenant not to sue if factors not known at the
11 time of entry of the settlement agreement are discovered and present a
12 previously unknown threat to human health or the environment.

13 (d) A party who has resolved its liability to the state under this
14 subsection shall not be liable for claims for contribution regarding
15 matters addressed in the settlement. The settlement does not discharge
16 any of the other liable parties but it reduces the total potential
17 liability of the others to the state by the amount of the settlement.

18 (5) Nothing in this chapter affects or modifies in any way any
19 person's right to seek or obtain relief under other statutes or under
20 common law, including but not limited to damages for injury or loss
21 resulting from a release or threatened release of a hazardous
22 substance. No settlement by the department or remedial action ordered
23 by a court or the department affects any person's right to obtain a
24 remedy under common law or other statutes.

--- END ---