

Fifty-seventh  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1297

Introduced by

Representatives Porter, R. Kelsch

Senator Cook

1 A BILL for an Act to create and enact a new section to chapter 23-20.3 of the North Dakota  
2 Century Code, relating to liability of property owners for hazardous waste on their property; and  
3 to amend and reenact section 23-31-01 of the North Dakota Century Code, relating to the  
4 recovery of costs of environmental emergencies.

### 5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new section to chapter 23-20.3 of the North Dakota Century Code is  
7 created and enacted as follows:

#### 8 **Limited liability for subsequent owners of property.**

- 9 1. Notwithstanding any other provision of law and except as expressly provided by  
10 federal law, a person who acquires property is not liable for any existing hazardous  
11 waste or substance on the property if (a) the person acquired the property after the  
12 disposal or placement of the hazardous waste or substance on, in, or at the  
13 property, and at the time the person acquired the property that person did not know  
14 and had no reason to know that any hazardous waste or substance was disposed  
15 of on, in, or at the property, (b) the person is a governmental entity that acquired  
16 the property by escheat, by tax sale, or through any other involuntary transfer or  
17 acquisition, or through the exercise of eminent domain authority by purchase or  
18 condemnation, or (c) the person acquired the property by inheritance or bequest  
19 and that person did not know and had no reason to know that any hazardous  
20 waste or substance was disposed of on, in, or at the property.
- 21 2. To establish that the person had no reason to know, the person must have  
22 undertaken, at the time of acquisition, all appropriate inquiry into the previous  
23 ownership and uses of the property consistent with good commercial or customary  
24 practice in an effort to minimize liability. For purposes of this requirement, a court

1           shall take into account any specialized knowledge or experience on the part of the  
2           person, the relationship of the purchase price to the value of the property as  
3           uncontaminated, commonly known or reasonably ascertainable information about  
4           the property, the obviousness of the presence or likely presence of contamination  
5           at the property, and the ability to detect the contamination by appropriate  
6           inspection.

7           3. A person who has acquired real property may establish a rebuttable presumption  
8           that that person has made all appropriate inquiry if that person establishes that,  
9           immediately before or at the time of acquisition, that person performed an  
10           investigation of the property, conducted by an environmental professional, to  
11           determine or discover the obviousness of the presence or likely presence of a  
12           release or threatened release of hazardous waste or substances on the property  
13           and which consists of a review of each of the following sources of information  
14           concerning the previous ownership and uses of the property:

- 15           a. Recorded chain of title documents regarding the property, including all deeds,  
16           easements, leases, restrictions, and covenants for a period of fifty years.  
17           b. Aerial photographs that may reflect prior uses of the property and which are  
18           reasonably obtainable through state or local governmental agencies.  
19           c. Determination of the existence of recorded environmental cleanup liens  
20           against the property that have arisen pursuant to federal, state, or local  
21           statutes.  
22           d. Reasonably obtainable federal, state, and local governmental records of sites  
23           or facilities where there has been a release of hazardous waste or substances  
24           and which are likely to cause or contribute to a release or threatened release  
25           of hazardous waste or substances on the property, including investigation  
26           reports for the sites or facilities; reasonably obtainable federal, state, and local  
27           governmental environmental records of activities likely to cause or contribute  
28           to a release or a threatened release of hazardous waste or substances on the  
29           property, including landfill and other disposal location records, underground  
30           storage tank records, hazardous waste handler and generator records, and  
31           spill recording records; and such other reasonably obtainable federal, state,

1                   and local governmental environmental records that report incidents or  
2                   activities that are likely to cause or contribute to a release or threatened  
3                   release of hazardous wastes or substances on the property.

4                   e. A visual site inspection of the property and all facilities and improvements on  
5                   the property, and a visual inspection of immediately adjacent properties from  
6                   the property, including investigation of any chemical use, storage, treatment,  
7                   and disposal practices on the property.

8                   4. The presumption does not arise unless the person has maintained a compilation of  
9                   the information reviewed in the course of the investigation. However, if the  
10                  investigation discloses the presence or likely presence of a release or threatened  
11                  release of hazardous waste or substances on the property to be acquired, the  
12                  presumption does not arise with respect to the release or threatened release  
13                  unless the person has taken reasonable steps, in accordance with current  
14                  technology available, existing regulations, and generally acceptable engineering  
15                  practices, as may be necessary to confirm the absence of the release or  
16                  threatened release. This section does not diminish the liability of any previous  
17                  owner or operator of the property who would otherwise be liable under this chapter  
18                  and nothing in this section affects the liability under this chapter of a person who,  
19                  by any act or omission, caused or contributed to the release or threatened release  
20                  of a hazardous waste or substance that is the subject of the action relating to the  
21                  property.

22                  5. As used in this section, environmental professional means an individual, or entity  
23                  managed or controlled by an individual, who, through academic training,  
24                  occupational experience, and reputation, such as engineers, environmental  
25                  consultants, and attorneys, can objectively conduct one or more aspects of an  
26                  environmental investigation.

27                  **SECTION 2. AMENDMENT.** Section 23-31-01 of the 1999 Supplement to the North  
28                  Dakota Century Code is amended and reenacted as follows:

29                  **23-31-01. Environmental emergency cost recovery.** ~~The~~ Except as provided in  
30                  section 1 of this Act, the state department of health may recover from the parties responsible for  
31                  an environmental emergency the reasonable and necessary state costs incurred in

1 assessment, removal, corrective action, or monitoring as a result of an environmental  
2 emergency in violation of chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, or 61-28.1. As used  
3 in this chapter, "environmental emergency" means a release into the environment of a  
4 substance requiring an immediate response to protect public health or welfare or the  
5 environment from an imminent and substantial endangerment and which is in violation of  
6 chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, or 61-28.1, and "reasonable and necessary  
7 costs" means those costs incurred by the department as a result of the failure of the parties  
8 responsible for the environmental emergency to implement appropriate assessment and  
9 corrective action after receipt of written notice from the department. If assessment, removal,  
10 monitoring, or corrective action must be initiated prior to identification of the responsible parties,  
11 the department may assess those prior costs to the responsible parties at the time they are  
12 identified.