

Fifty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED 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  
14 know and had no reason to know that any hazardous waste or substance was  
15 disposed of on, in, or at the property, (b) the person is a governmental entity that  
16 acquired the property by escheat, by tax sale, or through any other involuntary  
17 transfer or acquisition, or through the exercise of eminent domain authority by  
18 purchase or condemnation, or (c) the person acquired the property by inheritance  
19 or bequest and that person did not know and had no reason to know that any  
20 hazardous 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 may include 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  
24           substances and which are likely to cause or contribute to a release or  
25           threatened release of hazardous waste or substances on the property,  
26           including investigation reports for the sites or facilities; reasonably obtainable  
27           federal, state, and local governmental environmental records of activities  
28           likely to cause or contribute to a release or a threatened release of hazardous  
29           waste or substances on the property, including landfill and other disposal  
30           location records, underground storage tank records, hazardous waste handler  
31           and generator records, and spill recording records; and such other reasonably

1                   obtainable federal, state, and local governmental environmental records that  
2                   report incidents or activities that are likely to cause or contribute to a release  
3                   or threatened 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.

17                   5. This section does not diminish the liability of any previous owner or operator of the  
18                   property who would otherwise be liable under this chapter and nothing in this  
19                   section affects the liability under this chapter of a person who, by any act or  
20                   omission, caused or contributed to the release or threatened release of a  
21                   hazardous waste or substance that is the subject of the action relating to the  
22                   property.

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

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

30                   **23-31-01. Environmental emergency cost recovery.** The Except as provided in  
31                   section 1 of this Act, the state department of health may recover from the parties responsible

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