

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.