

Introduced by

Government and Veterans Affairs Committee

(At the request of the Adjutant General)

1 A BILL for an Act to amend and reenact section 37-17.1-07.1 of the North Dakota Century
2 Code, relating to hazardous chemical preparedness and response program fees and fines.

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

4 **SECTION 1. AMENDMENT.** Section 37-17.1-07.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **37-17.1-07.1. Hazardous chemicals preparedness and response program.**

7 1. Program components.

8 a. The governor shall appoint members of the state emergency response
9 commission to carry out the commission's responsibilities as outlined in Public
10 Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, and the
11 responsibilities of the commission members as outlined in the North Dakota
12 emergency operations plan.

13 b. In conjunction with the state emergency response commission, the local
14 emergency planning committees, as appointed by the boards of county
15 commissioners, and the local emergency management organizations shall
16 coordinate the development and maintenance of a state hazardous chemicals
17 preparedness and response program.

18 c. The director of the division of homeland security shall serve as the chairman of
19 the state emergency response commission. In the absence of the chairman, the
20 designated vice chairman shall serve as chairman. The state emergency
21 response commission by vote will select the vice chairman to fulfill a two-year
22 term. The chairman shall recognize the assignment of representatives to the
23 commission who are designated through a delegation of authority by a member.
24 The chairman shall designate a commission secretary, solely for the purpose of

1 documenting and distributing clerical proceedings, from the staff of the division of
2 homeland security.

3 d. For the purpose of complying with the reporting requirements set forth in
4 sections 302, 304, 311, 312, and 313 of Public Law 99-499, 42 U.S.C. 11001,
5 et seq., also referred to as SARA title III, the owner and operator of any facility, as
6 defined in SARA title III, shall submit those reports to the North Dakota division of
7 homeland security as required by SARA title III, which shall establish and
8 maintain the state repository for these reports.

9 e. For purposes of monitoring, determining if emergency response may be required,
10 and notifying local officials, owners and operators or responsible parties shall
11 report all spills or discharges to the appropriate state agency as required by law.
12 The report must include the name of the reporting party, including phone number
13 and address; date; time of release; location of release; containment status; name
14 of the chemical, if waterways are involved; and immediate potential threat. If the
15 release occurs or travels offsite from a facility, the owner and operator or
16 responsible party shall notify the surface owner within a reasonable time. State
17 agencies that receive direct reports of spills or discharges shall provide the report
18 information to the division within a time that is consistent with potential level of
19 response needed.

20 2. Establishment of funds.

21 a. There is created in the state treasury a nonlapsing restricted account to be
22 known as a state hazardous chemicals preparedness and response fund. The
23 fund consists of revenue collected from the state hazardous chemical fee system
24 and funds appropriated by the legislative assembly. Moneys in the fund shall be
25 appropriated biennially to the division of homeland security for carrying out the
26 purposes, goals, and objectives of SARA title III, and the state hazardous
27 chemicals preparedness and response program.

28 b. The county treasurer of each county shall establish a nonlapsing restricted
29 account, to be known as the county hazardous chemicals preparedness and
30 response account. The county hazardous chemicals preparedness and response
31 account consists of revenue from the state hazardous chemicals fee system,

1 county, federal or state funds, grants, and any private donations provided to
2 finance the county hazardous chemicals preparedness and response program.

- 3 c. Each owner and operator of a facility, as defined in SARA title III, shall pay an
4 annual hazardous chemicals fee to the division of homeland security by March
5 first of each year. The fee is twenty-five dollars for each chemical within the
6 meaning of ~~40-CFR-355.20~~title 40, Code of Federal Regulations, part 355.20, or
7 its successor which is required under section 312 of SARA title III, to be listed on
8 the hazardous chemical inventory form (tier II) which the owner or operator must
9 submit to the division. The federal requirements must be used for completing the
10 tier II form, including the threshold amounts, as outlined in ~~40-CFR-370.20~~title 40,
11 Code of Federal Regulations, part 20. The maximum fee for a facility under this
12 section is four hundred seventy-five dollars. The director of the homeland security
13 division may impose fees for both late filing of reports and late payment of fees.
14 After six months the director shall process further violations under willful
15 violations in subsection 4. The division of homeland security shall transfer to the
16 county hazardous chemicals preparedness and response account one-half of the
17 ~~funds~~regular fees collected from the state's hazardous chemicals fee system.
- 18 d. Owners or operators of facilities that maintain single storage tanks or a series of
19 connected tanks that have a shell capacity of five hundred thousand pounds
20 [226,796.2 kilograms] or more for each chemical within the meaning of title 40,
21 Code of Federal Regulations, part 355.20, under section 312 of SARA title III, are
22 subject to a surcharge of two hundred dollars per tank or for each series of
23 connected tanks. In addition, two hundred dollars per each range code above
24 one million pounds will be assessed. The maximum surcharge fee for any single
25 facility is two thousand dollars per year. Reporting of tanks requiring surcharges
26 is included in tier II reports and is due annually. The director of homeland security
27 division shall establish a grant program for emergency response departments
28 and disperse ninety-five percent of the funds collected from surcharges annually.
29 The remaining five percent must be retained by the division for the administration
30 of the state's hazardous chemical preparedness and response program.

- 1 e. The owners or operators of family farm enterprises that are not engaged in the
2 retail or wholesale of hazardous chemicals and facilities owned by the state or
3 local governments are exempt from the fee under subdivision c. For purposes of
4 this section, the terms "family farm" and "farmer" have the same meaning as set
5 forth in section 6-09.11-01.
- 6 e.f. The state and county governments are authorized to accept and may deposit
7 grants, gifts, and federal funds into the hazardous chemicals preparedness and
8 response fund and accounts for the purpose of carrying out the hazardous
9 chemicals preparedness and response programs to include training, exercising,
10 equipment, response, and salaries, and local emergency planning committee
11 member stipends not to exceed thirty percent of state per diem per meeting
12 attended. In lieu of stipends the committee chair may provide a meal or
13 refreshments.
- 14 f.g. "Hazardous chemical" means as defined in 40-CFR-355.20 title 40, Code of
15 Federal Regulations, part 355.20 and 29-CFR-1910.1200 title 29, Code of Federal
16 Regulations, part 1910.1200.
- 17 g.h. The state hazardous chemicals fee system does not supersede a city fee system
18 for hazardous chemicals.
- 19 3. a. A person who causes a release, as defined in 40-CFR-355.20 title 40, Code of
20 Federal Regulations, part 355.20, of a hazardous chemical in excess of the
21 reportable quantity of that chemical, as defined in 40-CFR-355.20 title 40, Code of
22 Federal Regulations, part 355.20, is liable for the response costs incurred by
23 state or local hazardous chemical response personnel. The state agency, local
24 agency, volunteer organization, or hazardous chemical response personnel, as
25 identified in the state or local emergency operations plan, which undertakes a
26 response action may recover those response costs in an action brought before a
27 court of competent jurisdiction. If more than one jurisdiction, organization, or
28 agency incurs response costs for the same hazardous chemical release or
29 incident, those hazardous chemical response jurisdictions, agencies,
30 organizations, or personnel may file a joint action and may designate one entity
31 to represent the others in the action.

- 1 b. In the action to recover reasonable and necessary response costs, state
2 agencies, local agencies, or volunteer organizations may include operational,
3 administrative, personnel, and legal costs incurred from its initial response action
4 up to the time that it recovers its cost. Reasonable and necessary costs are those
5 additional costs incurred that are a result of the responsible party's failure or
6 inability to implement or initiate the necessary actions to protect life, property, and
7 the environment.
- 8 4. a. A person who willfully violates any of the reporting, planning, or notification
9 requirements outlined in the provisions of the Emergency Planning and
10 Community Right-to-Know Act of 1986 [title III of Public Law 99-499, 42 U.S.C.
11 11001 et seq.], ~~or fails to pay a state hazardous chemicals fee~~ is subject to a civil
12 fine of not more than fifteen thousand dollars for each separate offense. For
13 purposes of this subdivision, each day of continued violation constitutes a
14 separate offense. All civil fines collected under this subdivision must be deposited
15 in the state general fund. The state and its political subdivisions and employees
16 of the state or a political subdivision acting within the scope of their employment
17 are not subject to the civil fines established in this subdivision.
- 18 b. Any person who knowingly falsifies information or who intentionally obstructs or
19 impairs, by force, violence, physical interference, or obstacle, a representative of
20 state or local government or state or local hazardous chemicals response
21 personnel attempting to perform duties and functions in state or local emergency
22 operations plans or complying with Public Law 99-499, SARA title III, is guilty of a
23 class B misdemeanor. The state and its political subdivisions and employees of
24 the state or a political subdivision acting within the scope of their employment are
25 not subject to the penalty established in this subdivision.
- 26 5. If the director of the division of homeland security determines that a violation of this
27 chapter has occurred, the director shall make all evidence available to the attorney
28 general for use in any remedial action the attorney general's office determines
29 appropriate, including injunctive relief. Nothing in this section may be construed to
30 deny use of the remedies authorized under chapter 32-40.