

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2110
(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact section 37-17.1-07.1 of the North Dakota Century Code, relating to hazardous chemical preparedness and response program fees and fines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. Program components.
 - a. The governor shall appoint members of the state emergency response commission to carry out the commission's responsibilities as outlined in Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, and the responsibilities of the commission members as outlined in the North Dakota emergency operations plan.
 - b. In conjunction with the state emergency response commission, the local emergency planning committees, as appointed by the boards of county commissioners, and the local emergency management organizations shall coordinate the development and maintenance of a state hazardous chemicals preparedness and response program.
 - c. The director of the division of homeland security shall serve as the chairman of the state emergency response commission. In the absence of the chairman, the designated vice chairman shall serve as chairman. The state emergency response commission by vote will select the vice chairman to fulfill a two-year term. The chairman shall recognize the assignment of representatives to the commission who are designated through a delegation of authority by a member. The chairman shall designate a commission secretary, solely for the purpose of documenting and distributing clerical proceedings, from the staff of the division of homeland security.
 - d. For the purpose of complying with the reporting requirements set forth in sections 302, 304, 311, 312, and 313 of Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, the owner and operator of any facility, as defined in SARA title III, shall submit those reports to the North Dakota division of homeland security as required by SARA title III, which shall establish and maintain the state repository for these reports.
 - e. For purposes of monitoring, determining if emergency response may be required, and notifying local officials, owners and operators or responsible parties shall report all spills or discharges to the appropriate state agency as required by law. The report must include the name of the reporting party, including phone number and address; date; time of release; location of release; containment status; name of the chemical, if waterways are involved; and immediate potential threat. If the release occurs or travels offsite from a facility, the owner and operator or responsible party shall notify the surface owner within a reasonable time. State agencies that receive direct reports of spills or discharges shall provide the report information to the division within a time that is consistent with potential level of response needed.
2. Establishment of funds.

- a. There is created in the state treasury a nonlapsing restricted account to be known as a state hazardous chemicals preparedness and response fund. The fund consists of revenue collected from the state hazardous chemical fee system and funds appropriated by the legislative assembly. Moneys in the fund shall be appropriated biennially to the division of homeland security for carrying out the purposes, goals, and objectives of SARA title III, and the state hazardous chemicals preparedness and response program.
 - b. The county treasurer of each county shall establish a nonlapsing restricted account, to be known as the county hazardous chemicals preparedness and response account. The county hazardous chemicals preparedness and response account consists of revenue from the state hazardous chemicals fee system, county, federal or state funds, grants, and any private donations provided to finance the county hazardous chemicals preparedness and response program.
 - c. Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of homeland security by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of ~~40 CFR 355.20~~title 40, Code of Federal Regulations, part 355.20, or its successor which is required under section 312 of SARA title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in ~~40 CFR 370.20~~title 40, Code of Federal Regulations, part 20. The maximum fee for a facility under this section is four hundred seventy-five dollars. The director of the homeland security division may impose fees for both late filing of reports and late payment of fees. A late fee must equal the amount of the hazardous chemicals fee owed under this subdivision. After six months the director shall process further violations under willful violations in subsection 4. The division of homeland security shall transfer to the county hazardous chemicals preparedness and response account one-half of the ~~fund's~~regular fees collected from the state's hazardous chemicals fee system.
 - d. The owners or operators of family farm enterprises that are not engaged in the retail or wholesale of hazardous chemicals and facilities owned by the state or local governments are exempt from the fee under subdivision c. For purposes of this section, the terms "family farm" and "farmer" have the same meaning as set forth in section 6-09.11-01.
 - e. The state and county governments are authorized to accept and may deposit grants, gifts, and federal funds into the hazardous chemicals preparedness and response fund and accounts for the purpose of carrying out the hazardous chemicals preparedness and response programs to include training, exercising, equipment, response, and salaries, and local emergency planning committee member stipends not to exceed thirty percent of state per diem per meeting attended. In lieu of stipends the committee chairman may provide a meal or refreshments other than alcoholic beverages.
 - f. "Hazardous chemical" means as defined in ~~40 CFR 355.20~~title 40, Code of Federal Regulations, part 355.20 and ~~29 CFR 1910.1200~~title 29, Code of Federal Regulations, part 1910.1200.
 - g. The state hazardous chemicals fee system does not supersede a city fee system for hazardous chemicals.
3. a. A person who causes a release, as defined in ~~40 CFR 355.20~~title 40, Code of Federal Regulations, part 355.20, of a hazardous chemical in excess of the reportable quantity of that chemical, as defined in ~~40 CFR 355.20~~title 40, Code of Federal Regulations, part 355.20, is liable for the response costs incurred by state or local hazardous chemical response personnel. The state agency, local agency, volunteer organization, or hazardous chemical response personnel, as identified in the state or local emergency operations plan, which undertakes a response action may recover those response costs

in an action brought before a court of competent jurisdiction. If more than one jurisdiction, organization, or agency incurs response costs for the same hazardous chemical release or incident, those hazardous chemical response jurisdictions, agencies, organizations, or personnel may file a joint action and may designate one entity to represent the others in the action.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2110.

Senate Vote: Yeas 45 Nays 2 Absent 0

House Vote: Yeas 81 Nays 10 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State