

## **455B.392 Liability for cleanup costs.**

1. A person having control over a hazardous substance is strictly liable to the state for all of the following:
  - a. The reasonable cleanup costs incurred by the state or its political subdivisions, by governmental subdivisions, or by any other persons participating in the prevention or mitigation of damages with the approval of the director, as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition caused by that person.
  - b. The reasonable costs incurred by the state to evacuate people from the area threatened by a hazardous condition caused by the person.
  - c. The reasonable damages to the state for the injury to, destruction of, or loss of natural resources resulting from a hazardous condition caused by that person including the costs of assessing the injury, destruction, or loss.
  - d. The excessive and extraordinary cost, excluding salaries, incurred by the department in responding at and to the scene of a hazardous condition caused by that person.

If the failure is willful, the person is liable for punitive damages not to exceed triple the cleanup costs incurred by the state. Prompt and good faith notification to the director by the person having control over a hazardous substance that the person does not have the resources or managerial capability to begin or continue cleanup, or a good faith effort to clean up, relieves the person of liability for punitive damages, but not for actual cleanup costs. The director shall keep a record of all expenses incurred in carrying out a project or activity authorized by this part.

Claims by the state under this subsection may be appealed to the commission by the person filing a written notice of appeal within thirty days after receipt of the bill.

2. Liability under subsection 1 is limited to the following maximum dollar limitations:
  - a. Five million dollars for any vehicle, boat, aircraft, pipeline, or other manner of conveyance which transports a hazardous substance.
  - b. Fifty million dollars for any facility generating, storing, or disposing of a hazardous substance.
3. There is no liability under this section for a person otherwise liable if the hazardous condition is solely resulting from one or more of the following:
  - a. An act of God.
  - b. An act of war.
  - c. An act or omission of a third party if the person establishes both of the following:
    - (1) That taking into consideration the characteristics of the hazardous substance, the person otherwise liable exercised due care with respect to the hazardous substance.
    - (2) That the person otherwise liable took precautions against the foreseeable acts or omissions of the third party and the foreseeable consequences.

As used in this paragraph, "*third party*" does not include an employee or agent of the person otherwise liable or a third party whose act or omission occurs directly or indirectly in connection with a contractual

relationship with the person otherwise liable.

4. There is no liability under this section for a person otherwise liable if all of the following conditions exist:

*a.* The liability arises during the transportation of a hazardous substance.

*b.* The fact that the hazardous substance is a hazardous substance has been misrepresented to the person transporting the hazardous substance.

*c.* The person transporting the hazardous substance does not know or have reason to know that the misrepresentation has been made.

5. Money collected pursuant to this section shall be deposited in the hazardous waste remedial fund created in section 455B.423. Moneys shall be used to reimburse governmental subdivisions requested to assist in the cleanup for which the moneys were collected. The remainder of the moneys shall be used in the manner permitted for the fund.

6. This section does not deny any person any legal or equitable rights, remedies or defenses or affect any legal relationship other than the legal relationship between the state and a person having control over a hazardous substance pursuant to subsection 1.

7. *a.* There is no liability under this section for a person who has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, regardless of when that person acquired title or right to title to the hazardous condition site, except that a person otherwise exempt from liability under this subsection shall be liable to the state for the lesser of:

(1) The total reasonable cleanup costs incurred by the state to clean up a hazardous substance at the hazardous condition site; or

(2) The amount representing the postcleanup fair market value of the property comprising the hazardous condition site.

*b.* Liability under this subsection shall only be imposed when the person holds title to the hazardous condition site at the time the state incurs reasonable cleanup costs.

*c.* For purposes of this subsection, "*postcleanup fair market value*" means the actual amount of consideration received by such person upon sale or transfer of the hazardous condition site which has been cleaned up by the state to a bona fide purchaser for value.

*d.* Cleanup expenses incurred by the state shall be a lien upon the real estate constituting the hazardous condition site, recordable and collectable in the same manner as provided for in section 424.11, subject to the terms of this subsection. The lien shall attach at the time the state incurs expenses to clean up the hazardous condition site. The lien shall be valid as against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, only when a notice of the lien is filed with the recorder of the county in which the property is located. Upon payment by the person to the state, of the amount specified in this subsection, the state shall release the lien. If no lien has been recorded at the time the person sells or transfers the property, then the person shall not be liable for any cleanup costs incurred by the state.

84 Acts, ch 1108, § 4; 86 Acts, ch 1158, § 2, 3; 86 Acts, ch 1245, § 1899; 93 Acts, ch 42, §3; 94 Acts, ch 1157, §1, 2