

107TH CONGRESS  
1ST SESSION

# H. R. 1831

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IN THE SENATE OF THE UNITED STATES

JUNE 13, 2001

Received; read twice and referred to the Committee on Environment and  
Public Works

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## AN ACT

To provide certain relief for small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Liabil-  
3 ity Protection Act”.

4 **SEC. 2. SMALL BUSINESS LIABILITY RELIEF.**

5 (a) EXEMPTIONS.—Section 107 of the Comprehen-  
6 sive Environmental Response, Compensation, and Liabil-  
7 ity Act of 1980 (42 U.S.C. 9607) is amended by adding  
8 at the end the following new subsections:

9 “(o) DE MICROMIS EXEMPTION.—

10 “(1) IN GENERAL.—Except as provided in para-  
11 graph (2), a person shall not be liable, with respect  
12 to response costs at a facility on the National Prior-  
13 ities List, under this Act if liability is based solely  
14 on paragraph (3) or (4) of subsection (a), and the  
15 person, except as provided in paragraph (4) of this  
16 subsection, can demonstrate that—

17 “(A) the total amount of the material con-  
18 taining hazardous substances that the person  
19 arranged for disposal or treatment of, arranged  
20 with a transporter for transport for disposal or  
21 treatment of, or accepted for transport for dis-  
22 posal or treatment, at the facility was less than  
23 110 gallons of liquid materials or less than 200  
24 pounds of solid materials (or such greater or  
25 lesser amounts as the Administrator may deter-  
26 mine by regulation); and

1           “(B) all or part of the disposal, treatment,  
2           or transport concerned occurred before April 1,  
3           2001.

4           “(2) EXCEPTIONS.—Paragraph (1) shall not  
5           apply in a case in which—

6           “(A) the President determines that—

7                   “(i) the materials containing haz-  
8                   ardous substances referred to in paragraph  
9                   (1) have contributed significantly or could  
10                  contribute significantly, either individually  
11                  or in the aggregate, to the cost of the re-  
12                  sponse action or natural resource restora-  
13                  tion with respect to the facility; or

14                   “(ii) the person has failed to comply  
15                   with an information request or administra-  
16                   tive subpoena issued by the President  
17                   under this Act or has impeded or is imped-  
18                   ing, through action or inaction, the per-  
19                   formance of a response action or natural  
20                   resource restoration with respect to the fa-  
21                   cility; or

22           “(B) a person has been convicted of a  
23           criminal violation for the conduct to which the  
24           exemption would apply, and that conviction has  
25           not been vitiated on appeal or otherwise.

1           “(3) NO JUDICIAL REVIEW.—A determination  
2           by the President under paragraph (2)(A) shall not  
3           be subject to judicial review.

4           “(4) NONGOVERNMENTAL THIRD-PARTY CON-  
5           TRIBUTION ACTIONS.—In the case of a contribution  
6           action, with respect to response costs at a facility on  
7           the National Priorities List, brought by a party,  
8           other than a Federal, State, or local government,  
9           under this Act, the burden of proof shall be on the  
10          party bringing the action to demonstrate that the  
11          conditions described in paragraph (1)(A) and (B) of  
12          this subsection are not met.

13          “(p) MUNICIPAL SOLID WASTE EXEMPTION.—

14                 “(1) IN GENERAL.—Except as provided in para-  
15                 graph (2) of this subsection, a person shall not be  
16                 liable, with respect to response costs at a facility on  
17                 the National Priorities List, under paragraph (3) of  
18                 subsection (a) for municipal solid waste disposed of  
19                 at a facility if the person, except as provided in  
20                 paragraph (5) of this subsection, can demonstrate  
21                 that the person is—

22                         “(A) an owner, operator, or lessee of resi-  
23                         dential property from which all of the person’s  
24                         municipal solid waste was generated with re-  
25                         spect to the facility;

1           “(B) a business entity (including a parent,  
2 subsidiary, or affiliate of the entity) that, dur-  
3 ing its 3 taxable years preceding the date of  
4 transmittal of written notification from the  
5 President of its potential liability under this  
6 section, employed on average not more than  
7 100 full-time individuals, or the equivalent  
8 thereof, and that is a small business concern  
9 (within the meaning of the Small Business Act  
10 (15 U.S.C. 631 et seq.)) from which was gen-  
11 erated all of the municipal solid waste attrib-  
12 utable to the entity with respect to the facility;  
13 or

14           “(C) an organization described in section  
15 501(c)(3) of the Internal Revenue Code of 1986  
16 and exempt from tax under section 501(a) of  
17 such Code that, during its taxable year pre-  
18 ceding the date of transmittal of written notifi-  
19 cation from the President of its potential liabil-  
20 ity under this section, employed not more than  
21 100 paid individuals at the location from which  
22 was generated all of the municipal solid waste  
23 attributable to the organization with respect to  
24 the facility.

1 For purposes of this subsection, the term ‘affiliate’  
2 has the meaning of that term provided in the defini-  
3 tion of ‘small business concern’ in regulations pro-  
4 mulgated by the Small Business Administration in  
5 accordance with the Small Business Act (15 U.S.C.  
6 631 et seq.).

7 “(2) EXCEPTION.—Paragraph (1) shall not  
8 apply in a case in which the President determines  
9 that—

10 “(A) the municipal solid waste referred to  
11 in paragraph (1) has contributed significantly  
12 or could contribute significantly, either individ-  
13 ually or in the aggregate, to the cost of the re-  
14 sponse action or natural resource restoration  
15 with respect to the facility;

16 “(B) the person has failed to comply with  
17 an information request or administrative sub-  
18 poena issued by the President under this Act;  
19 or

20 “(C) the person has impeded or is imped-  
21 ing, through action or inaction, the performance  
22 of a response action or natural resource res-  
23 toration with respect to the facility.

1           “(3) NO JUDICIAL REVIEW.—A determination  
2           by the President under paragraph (2) shall not be  
3           subject to judicial review.

4           “(4) DEFINITION OF MUNICIPAL SOLID  
5           WASTE.—

6           “(A) IN GENERAL.—For purposes of this  
7           subsection, the term ‘municipal solid waste’  
8           means waste material—

9                   “(i) generated by a household (includ-  
10                   ing a single or multifamily residence); and

11                   “(ii) generated by a commercial, in-  
12                   dustrial, or institutional entity, to the ex-  
13                   tent that the waste material—

14                           “(I) is essentially the same as  
15                           waste normally generated by a house-  
16                           hold;

17                           “(II) is collected and disposed of  
18                           with other municipal solid waste as  
19                           part of normal municipal solid waste  
20                           collection services; and

21                           “(III) contains a relative quan-  
22                           tity of hazardous substances no great-  
23                           er than the relative quantity of haz-  
24                           ardous substances contained in waste

1 material generated by a typical single-  
2 family household.

3 “(B) EXAMPLES.—Examples of municipal  
4 solid waste under subparagraph (A) include  
5 food and yard waste, paper, clothing, appli-  
6 ances, consumer product packaging, disposable  
7 diapers, office supplies, cosmetics, glass and  
8 metal food containers, elementary or secondary  
9 school science laboratory waste, and household  
10 hazardous waste.

11 “(C) EXCLUSIONS.—The term ‘municipal  
12 solid waste’ does not include—

13 “(i) combustion ash generated by re-  
14 source recovery facilities or municipal in-  
15 cinerators; or

16 “(ii) waste material from manufac-  
17 turing or processing operations (including  
18 pollution control operations) that is not es-  
19 sentially the same as waste normally gen-  
20 erated by households.

21 “(5) BURDEN OF PROOF.—In the case of an ac-  
22 tion, with respect to response costs at a facility on  
23 the National Priorities List, brought under section  
24 107 or 113 by—



1           “(A) a party, other than a Federal, State,  
2           or local government, with respect to municipal  
3           solid waste disposed of on or after April 1,  
4           2001; or

5           “(B) any party with respect to municipal  
6           solid waste disposed of before April 1, 2001, the  
7           burden of proof shall be on the party bringing  
8           the action to demonstrate that the conditions  
9           described in paragraphs (1) and (4) for exemp-  
10          tion for entities and organizations described in  
11          paragraph (1)(B) and (C) are not met.

12          “(6) CERTAIN ACTIONS NOT PERMITTED.—No  
13          contribution action may be brought by a party, other  
14          than a Federal, State, or local government, under  
15          this Act with respect to circumstances described in  
16          paragraph (1)(A).

17          “(7) COSTS AND FEES.—A nongovernmental  
18          entity that commences, after the date of the enact-  
19          ment of this subsection, a contribution action under  
20          this Act shall be liable to the defendant for all rea-  
21          sonable costs of defending the action, including all  
22          reasonable attorney’s fees and expert witness fees, if  
23          the defendant is not liable for contribution based on  
24          an exemption under this subsection or subsection  
25          (o).”.

1 (b) EXPEDITED SETTLEMENT.—Section 122(g) of  
2 such Act (42 U.S.C. 9622(g)) is amended by adding at  
3 the end the following new paragraphs:

4 “(7) REDUCTION IN SETTLEMENT AMOUNT  
5 BASED ON LIMITED ABILITY TO PAY.—

6 “(A) IN GENERAL.—The condition for set-  
7 tlement under this paragraph is that the poten-  
8 tially responsible party is a person who dem-  
9 onstrates to the President an inability or a lim-  
10 ited ability to pay response costs.

11 “(B) CONSIDERATIONS.—In determining  
12 whether or not a demonstration is made under  
13 subparagraph (A) by a person, the President  
14 shall take into consideration the ability of the  
15 person to pay response costs and still maintain  
16 its basic business operations, including consid-  
17 eration of the overall financial condition of the  
18 person and demonstrable constraints on the  
19 ability of the person to raise revenues.

20 “(C) INFORMATION.—A person requesting  
21 settlement under this paragraph shall promptly  
22 provide the President with all relevant informa-  
23 tion needed to determine the ability of the per-  
24 son to pay response costs.

1           “(D) ALTERNATIVE PAYMENT METH-  
2           ODS.—If the President determines that a per-  
3           son is unable to pay its total settlement amount  
4           at the time of settlement, the President shall  
5           consider such alternative payment methods as  
6           may be necessary or appropriate.

7           “(8) ADDITIONAL CONDITIONS FOR EXPEDITED  
8           SETTLEMENTS.—

9           “(A) WAIVER OF CLAIMS.—The President  
10          shall require, as a condition for settlement  
11          under this subsection, that a potentially respon-  
12          sible party waive all of the claims (including a  
13          claim for contribution under this Act) that the  
14          party may have against other potentially re-  
15          sponsible parties for response costs incurred  
16          with respect to the facility, unless the President  
17          determines that requiring a waiver would be un-  
18          just.

19          “(B) FAILURE TO COMPLY.—The Presi-  
20          dent may decline to offer a settlement to a po-  
21          tentially responsible party under this subsection  
22          if the President determines that the potentially  
23          responsible party has failed to comply with any  
24          request for access or information or an adminis-  
25          trative subpoena issued by the President under

1           this Act or has impeded or is impeding, through  
2           action or inaction, the performance of a re-  
3           sponse action with respect to the facility.

4           “(C) RESPONSIBILITY TO PROVIDE INFOR-  
5           MATION AND ACCESS.—A potentially responsible  
6           party that enters into a settlement under this  
7           subsection shall not be relieved of the responsi-  
8           bility to provide any information or access re-  
9           quested in accordance with subsection (e)(3)(B)  
10          or section 104(e).

11          “(9) BASIS OF DETERMINATION.—If the Presi-  
12          dent determines that a potentially responsible party  
13          is not eligible for settlement under this subsection,  
14          the President shall provide the reasons for the deter-  
15          mination in writing to the potentially responsible  
16          party that requested a settlement under this sub-  
17          section.

18          “(10) NOTIFICATION.—As soon as practicable  
19          after receipt of sufficient information to make a de-  
20          termination, the President shall notify any person  
21          that the President determines is eligible under para-  
22          graph (1) of the person’s eligibility for an expedited  
23          settlement.

