

Union Calendar No. 39

107TH CONGRESS
1ST SESSION

H. R. 1831

[Report No. 107-70, Parts I and II]

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

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2001

Mr. GILLMOR (for himself, Mr. PALLONE, Mr. DUNCAN, Mr. DEFazio, Mr. SHIMKUS, Mr. DINGELL, Mr. YOUNG of Alaska, Mr. OBERSTAR, Mr. TAUZIN, Mr. STUPAK, Mr. OTTER, Mr. PASCRELL, Mr. EHRlich, Mr. TOWNS, Mr. THUNE, Mr. BLUMENAUER, Mr. GREENWOOD, Mr. GORDON, Mr. LOBIONDO, Mr. HOLDEN, Mr. LARGENT, Mr. DEUTSCH, Mr. FERGUSON, Mr. BARCIA, Mr. BILIRAKIS, Mr. SAWYER, Mr. PETRI, Mr. SANDLIN, Mrs. BONO, Mr. JOHN, Mr. BOEHLERT, Mr. FILNER, Mr. WALDEN, Mr. DOYLE, Mr. COOKSEY, Mr. MASCARA, Mrs. WILSON, Mrs. CAPPS, Mr. BAKER, Mr. RAHALL, Mr. BASS, Mr. STRICKLAND, Mr. JOHNSON of Illinois, Mr. BERRY, Mr. BLUNT, Mr. BROWN of Ohio, Mr. GILCHREST, Mr. BARRETT of Wisconsin, Mr. BUYER, Mr. HORN, Mr. EVANS, Mr. SIMMONS, Mr. KIND, Mr. EHLERS, Mr. SPRATT, Mr. SHERWOOD, Mr. LIPINSKI, Mr. BACHUS, Mr. SHOWS, Mr. SWEENEY, Mr. GARY G. MILLER of California, Mr. REYNOLDS, Mr. CRAMER, and Mr. MCHUGH) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MAY 21, 2001

Additional sponsors: Mr. OXLEY, Mr. GANSKE, Ms. MCCARTHY of Missouri, Mr. BRADY of Texas, Mr. PICKERING, Mr. RADANOVICH, Mr. COSTELLO, Mr. BORSKI, Mr. BAIRD, Mr. GREEN of Texas, Mr. HALL of Texas, Mr. BURR of North Carolina, Mr. UPTON, Mr. LUTHER, Mr. STEARNS, Mr. TURNER, Mrs. ROUKEMA, and Mr. CONDIT

MAY 21, 2001

Reported from the Committee on Energy and Commerce

MAY 21, 2001

Reported from the Committee on Transportation and Infrastructure; referred to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

11 “(o) DE MICROMIS EXEMPTION.—

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

1 person, except as provided in paragraph (4) of this
2 subsection, can demonstrate that—

3 “(A) the total amount of the material con-
4 taining hazardous substances that the person
5 arranged for disposal or treatment of, arranged
6 with a transporter for transport for disposal or
7 treatment of, or accepted for transport for dis-
8 posal or treatment, at the facility was less than
9 110 gallons of liquid materials or less than 200
10 pounds of solid materials (or such greater or
11 lesser amounts as the Administrator may deter-
12 mine by regulation); and

13 “(B) all or part of the disposal, treatment,
14 or transport concerned occurred before April 1,
15 2001.

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

18 “(A) the President determines that—

19 “(i) the materials containing haz-
20 ardous substances referred to in paragraph
21 (1) have contributed significantly or could
22 contribute significantly, either individually
23 or in the aggregate, to the cost of the re-
24 sponse action or natural resource restora-
25 tion with respect to the facility; or

1 “(ii) the person has failed to comply
2 with an information request or administra-
3 tive subpoena issued by the President
4 under this Act or has impeded or is imped-
5 ing, through action or inaction, the per-
6 formance of a response action or natural
7 resource restoration with respect to the fa-
8 cility; or

9 “(B) a person has been convicted of a
10 criminal violation for the conduct to which the
11 exemption would apply, and that conviction has
12 not been vitiated on appeal or otherwise.

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

16 “(4) NONGOVERNMENTAL THIRD-PARTY CON-
17 TRIBUTION ACTIONS.—In the case of a contribution
18 action, with respect to response costs at a facility on
19 the National Priorities List, brought by a party,
20 other than a Federal, State, or local government,
21 under this Act, the burden of proof shall be on the
22 party bringing the action to demonstrate that the
23 conditions described in paragraph (1) (A) and (B) of
24 this subsection are not met.

25 “(p) MUNICIPAL SOLID WASTE EXEMPTION.—

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

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

13 “(B) a business entity (including a parent,
14 subsidiary, or affiliate of the entity) that, dur-
15 ing its 3 taxable years preceding the date of
16 transmittal of written notification from the
17 President of its potential liability under this
18 section, employed on average not more than
19 100 full-time individuals, or the equivalent
20 thereof, and that is a small business concern
21 (within the meaning of the Small Business Act
22 (15 U.S.C. 631 et seq.)) from which was gen-
23 erated all of the municipal solid waste attrib-
24 utable to the entity with respect to the facility;

25 or

1 “(C) an organization described in section
2 501(c)(3) of the Internal Revenue Code of 1986
3 and exempt from tax under section 501(a) of
4 such Code that, during its taxable year pre-
5 ceding the date of transmittal of written notifi-
6 cation from the President of its potential liabil-
7 ity under this section, employed not more than
8 100 paid individuals at the location from which
9 was generated all of the municipal solid waste
10 attributable to the organization with respect to
11 the facility.

12 For purposes of this subsection, the term ‘affiliate’
13 has the meaning of that term provided in the defini-
14 tion of ‘small business concern’ in regulations pro-
15 mulgated by the Small Business Administration in
16 accordance with the Small Business Act (15 U.S.C.
17 631 et seq.).

18 “(2) EXCEPTION.—Paragraph (1) shall not
19 apply in a case in which the President determines
20 that—

21 “(A) the municipal solid waste referred to
22 in paragraph (1) has contributed significantly
23 or could contribute significantly, either individ-
24 ually or in the aggregate, to the cost of the re-

1 response action or natural resource restoration
2 with respect to the facility;

3 “(B) the person has failed to comply with
4 an information request or administrative sub-
5 poena issued by the President under this Act;
6 or

7 “(C) the person has impeded or is imped-
8 ing, through action or inaction, the performance
9 of a response action or natural resource res-
10 toration with respect to the facility.

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

14 “(4) DEFINITION OF MUNICIPAL SOLID
15 WASTE.—

16 “(A) IN GENERAL.—For purposes of this
17 subsection, the term ‘municipal solid waste’
18 means waste material—

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

21 “(ii) generated by a commercial, in-
22 dustrial, or institutional entity, to the ex-
23 tent that the waste material—

1 “(I) is essentially the same as
2 waste normally generated by a house-
3 hold;

4 “(II) is collected and disposed of
5 with other municipal solid waste as
6 part of normal municipal solid waste
7 collection services; and

8 “(III) contains a relative quan-
9 tity of hazardous substances no great-
10 er than the relative quantity of haz-
11 ardous substances contained in waste
12 material generated by a typical single-
13 family household.

14 “(B) EXAMPLES.—Examples of municipal
15 solid waste under subparagraph (A) include
16 food and yard waste, paper, clothing, appli-
17 ances, consumer product packaging, disposable
18 diapers, office supplies, cosmetics, glass and
19 metal food containers, elementary or secondary
20 school science laboratory waste, and household
21 hazardous waste.

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

1 “(i) combustion ash generated by re-
2 source recovery facilities or municipal in-
3 cinerators; or

4 “(ii) waste material from manufac-
5 turing or processing operations (including
6 pollution control operations) that is not es-
7 sentially the same as waste normally gen-
8 erated by households.

9 “(5) BURDEN OF PROOF.—In the case of an ac-
10 tion, with respect to response costs at a facility on
11 the National Priorities List, brought under section
12 107 or 113 by—

13 “(A) a party, other than a Federal, State,
14 or local government, with respect to municipal
15 solid waste disposed of on or after April 1,
16 2001; or

17 “(B) any party with respect to municipal
18 solid waste disposed of before April 1, 2001, the
19 burden of proof shall be on the party bringing
20 the action to demonstrate that the conditions
21 described in paragraphs (1) and (4) for exemp-
22 tion for entities and organizations described in
23 paragraph (1) (B) and (C) are not met.

24 “(6) CERTAIN ACTIONS NOT PERMITTED.—No
25 contribution action may be brought by a party, other

1 than a Federal, State, or local government, under
2 this Act with respect to circumstances described in
3 paragraph (1)(A).

4 “(7) COSTS AND FEES.—A nongovernmental
5 entity that commences, after the date of the enact-
6 ment of this subsection, a contribution action under
7 this Act shall be liable to the defendant for all rea-
8 sonable costs of defending the action, including all
9 reasonable attorney’s fees and expert witness fees, if
10 the defendant is not liable for contribution based on
11 an exemption under this subsection or subsection
12 (o).”.

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

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

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

23 “(B) CONSIDERATIONS.—In determining
24 whether or not a demonstration is made under
25 subparagraph (A) by a person, the President

1 shall take into consideration the ability of the
2 person to pay response costs and still maintain
3 its basic business operations, including consid-
4 eration of the overall financial condition of the
5 person and demonstrable constraints on the
6 ability of the person to raise revenues.

7 “(C) INFORMATION.—A person requesting
8 settlement under this paragraph shall promptly
9 provide the President with all relevant informa-
10 tion needed to determine the ability of the per-
11 son to pay response costs.

12 “(D) ALTERNATIVE PAYMENT METH-
13 ODS.—If the President determines that a per-
14 son is unable to pay its total settlement amount
15 at the time of settlement, the President shall
16 consider such alternative payment methods as
17 may be necessary or appropriate.

18 “(8) ADDITIONAL CONDITIONS FOR EXPEDITED
19 SETTLEMENTS.—

20 “(A) WAIVER OF CLAIMS.—The President
21 shall require, as a condition for settlement
22 under this subsection, that a potentially respon-
23 sible party waive all of the claims (including a
24 claim for contribution under this Act) that the
25 party may have against other potentially re-

1 sponsible parties for response costs incurred
2 with respect to the facility, unless the President
3 determines that requiring a waiver would be un-
4 just.

5 “(B) FAILURE TO COMPLY.—The Presi-
6 dent may decline to offer a settlement to a po-
7 tentially responsible party under this subsection
8 if the President determines that the potentially
9 responsible party has failed to comply with any
10 request for access or information or an adminis-
11 trative subpoena issued by the President under
12 this Act or has impeded or is impeding, through
13 action or inaction, the performance of a re-
14 sponse action with respect to the facility.

15 “(C) RESPONSIBILITY TO PROVIDE INFOR-
16 MATION AND ACCESS.—A potentially responsible
17 party that enters into a settlement under this
18 subsection shall not be relieved of the responsi-
19 bility to provide any information or access re-
20 quested in accordance with subsection (e)(3)(B)
21 or section 104(e).

22 “(9) BASIS OF DETERMINATION.—If the Presi-
23 dent determines that a potentially responsible party
24 is not eligible for settlement under this subsection,
25 the President shall provide the reasons for the deter-

1 mination in writing to the potentially responsible
2 party that requested a settlement under this sub-
3 section.

4 “(10) NOTIFICATION.—As soon as practicable
5 after receipt of sufficient information to make a de-
6 termination, the President shall notify any person
7 that the President determines is eligible under para-
8 graph (1) of the person’s eligibility for an expedited
9 settlement.

10 “(11) NO JUDICIAL REVIEW.—A determination
11 by the President under paragraph (7), (8), (9), or
12 (10) shall not be subject to judicial review.

13 “(12) NOTICE OF SETTLEMENT.—After a set-
14 tlement under this subsection becomes final with re-
15 spect to a facility, the President shall promptly no-
16 tify potentially responsible parties at the facility that
17 have not resolved their liability to the United States
18 of the settlement.”.

19 **SEC. 3. EFFECT ON CONCLUDED ACTIONS.**

20 The amendments made by this Act shall not apply
21 to or in any way affect any settlement lodged in, or judg-
22 ment issued by, a United States District Court, or any
23 administrative settlement or order entered into or issued
24 by the United States or any State, before the date of the
25 enactment of this Act.

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