

107TH CONGRESS  
1ST SESSION

# S. 1064

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

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## IN THE SENATE OF THE UNITED STATES

JUNE 19, 2001

Mr. BOND (for himself, Mr. REID, Mr. SMITH of New Hampshire, Mr. KERRY, Mr. WARNER, Mr. CHAFEE, Mr. WYDEN, Mr. CLELAND, Mr. ENSIGN, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

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

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-

1 ity Act of 1980 (42 U.S.C. 9607) is amended by adding  
2 at the end the following new subsections:

3 “(o) DE MICROMIS EXEMPTION.—

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

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

21 “(B) all or part of the disposal, treatment,  
22 or transport concerned occurred before April 1,  
23 2001.

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

1 “(A) the President determines that—

2 “(i) the materials containing haz-  
3 arduous substances referred to in paragraph  
4 (1) have contributed significantly or could  
5 contribute significantly, either individually  
6 or in the aggregate, to the cost of the re-  
7 sponse action or natural resource restora-  
8 tion with respect to the facility; or

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

17 “(B) a person has been convicted of a  
18 criminal violation for the conduct to which the  
19 exemption would apply, and that conviction has  
20 not been vitiated on appeal or otherwise.

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

24 “(4) NONGOVERNMENTAL THIRD-PARTY CON-  
25 TRIBUTION ACTIONS.—In the case of a contribution

1 action, with respect to response costs at a facility on  
2 the National Priorities List, brought by a party,  
3 other than a Federal, State, or local government,  
4 under this Act, the burden of proof shall be on the  
5 party bringing the action to demonstrate that the  
6 conditions described in paragraph (1)(A) and (B) of  
7 this subsection are not met.

8 “(p) MUNICIPAL SOLID WASTE EXEMPTION.—

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

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

21 “(B) a business entity (including a parent,  
22 subsidiary, or affiliate of the entity) that, dur-  
23 ing its 3 taxable years preceding the date of  
24 transmittal of written notification from the  
25 President of its potential liability under this

1 section, employed on average not more than  
2 100 full-time individuals, or the equivalent  
3 thereof, and that is a small business concern  
4 (within the meaning of the Small Business Act  
5 (15 U.S.C. 631 et seq.)) from which was gen-  
6 erated all of the municipal solid waste attrib-  
7 utable to the entity with respect to the facility;  
8 or

9 “(C) an organization described in section  
10 501(c)(3) of the Internal Revenue Code of 1986  
11 and exempt from tax under section 501(a) of  
12 such Code that, during its taxable year pre-  
13 ceding the date of transmittal of written notifi-  
14 cation from the President of its potential liabil-  
15 ity under this section, employed not more than  
16 100 paid individuals at the location from which  
17 was generated all of the municipal solid waste  
18 attributable to the organization with respect to  
19 the facility.

20 For purposes of this subsection, the term ‘affiliate’  
21 has the meaning of that term provided in the defini-  
22 tion of ‘small business concern’ in regulations pro-  
23 mulgated by the Small Business Administration in  
24 accordance with the Small Business Act (15 U.S.C.  
25 631 et seq.).

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

4           “(A) the municipal solid waste referred to  
5 in paragraph (1) has contributed significantly  
6 or could contribute significantly, either individ-  
7 ually or in the aggregate, to the cost of the re-  
8 sponse action or natural resource restoration  
9 with respect to the facility;

10           “(B) the person has failed to comply with  
11 an information request or administrative sub-  
12 poena issued by the President under this Act;  
13 or

14           “(C) the person has impeded or is imped-  
15 ing, through action or inaction, the performance  
16 of a response action or natural resource res-  
17 toration with respect to the facility.

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

21           “(4) DEFINITION OF MUNICIPAL SOLID  
22 WASTE.—

23           “(A) IN GENERAL.—For purposes of this  
24 subsection, the term ‘municipal solid waste’  
25 means waste material—

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

3 “(ii) generated by a commercial, in-  
4 dustrial, or institutional entity, to the ex-  
5 tent that the waste material—

6 “(I) is essentially the same as  
7 waste normally generated by a house-  
8 hold;

9 “(II) is collected and disposed of  
10 with other municipal solid waste as  
11 part of normal municipal solid waste  
12 collection services; and

13 “(III) contains a relative quan-  
14 tity of hazardous substances no great-  
15 er than the relative quantity of haz-  
16 ardous substances contained in waste  
17 material generated by a typical single-  
18 family household.

19 “(B) EXAMPLES.—Examples of municipal  
20 solid waste under subparagraph (A) include  
21 food and yard waste, paper, clothing, appli-  
22 ances, consumer product packaging, disposable  
23 diapers, office supplies, cosmetics, glass and  
24 metal food containers, elementary or secondary

1 school science laboratory waste, and household  
2 hazardous waste.

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

5 “(i) combustion ash generated by re-  
6 source recovery facilities or municipal in-  
7 cinerators; or

8 “(ii) waste material from manufac-  
9 turing or processing operations (including  
10 pollution control operations) that is not es-  
11 sentially the same as waste normally gen-  
12 erated by households.

13 “(5) BURDEN OF PROOF.—In the case of an ac-  
14 tion, with respect to response costs at a facility on  
15 the National Priorities List, brought under section  
16 107 or 113 by—

17 “(A) a party, other than a Federal, State,  
18 or local government, with respect to municipal  
19 solid waste disposed of on or after April 1,  
20 2001; or

21 “(B) any party with respect to municipal  
22 solid waste disposed of before April 1, 2001, the  
23 burden of proof shall be on the party bringing  
24 the action to demonstrate that the conditions  
25 described in paragraphs (1) and (4) for exemp-

1           tion for entities and organizations described in  
2           paragraph (1)(B) and (C) are not met.

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

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

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

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

22                         “(A) IN GENERAL.—The condition for set-  
23                         tlement under this paragraph is that the poten-  
24                         tially responsible party is a person who dem-

1           onstrates to the President an inability or a lim-  
2           ited ability to pay response costs.

3           “(B) CONSIDERATIONS.—In determining  
4           whether or not a demonstration is made under  
5           subparagraph (A) by a person, the President  
6           shall take into consideration the ability of the  
7           person to pay response costs and still maintain  
8           its basic business operations, including consid-  
9           eration of the overall financial condition of the  
10          person and demonstrable constraints on the  
11          ability of the person to raise revenues.

12          “(C) INFORMATION.—A person requesting  
13          settlement under this paragraph shall promptly  
14          provide the President with all relevant informa-  
15          tion needed to determine the ability of the per-  
16          son to pay response costs.

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

23          “(8) ADDITIONAL CONDITIONS FOR EXPEDITED  
24          SETTLEMENTS.—

1           “(A) WAIVER OF CLAIMS.—The President  
2 shall require, as a condition for settlement  
3 under this subsection, that a potentially respon-  
4 sible party waive all of the claims (including a  
5 claim for contribution under this Act) that the  
6 party may have against other potentially re-  
7 sponsible parties for response costs incurred  
8 with respect to the facility, unless the President  
9 determines that requiring a waiver would be un-  
10 just.

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

21           “(C) RESPONSIBILITY TO PROVIDE INFOR-  
22 MATION AND ACCESS.—A potentially responsible  
23 party that enters into a settlement under this  
24 subsection shall not be relieved of the responsi-  
25 bility to provide any information or access re-

1            requested in accordance with subsection (e)(3)(B)  
2            or section 104(e).

3            “(9) BASIS OF DETERMINATION.—If the Presi-  
4            dent determines that a potentially responsible party  
5            is not eligible for settlement under this subsection,  
6            the President shall provide the reasons for the deter-  
7            mination in writing to the potentially responsible  
8            party that requested a settlement under this sub-  
9            section.

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

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

19           “(12) NOTICE OF SETTLEMENT.—After a set-  
20           tlement under this subsection becomes final with re-  
21           spect to a facility, the President shall promptly no-  
22           tify potentially responsible parties at the facility that  
23           have not resolved their liability to the United States  
24           of the settlement.”.

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

2       The amendments made by this Act shall not apply  
3 to or in any way affect any settlement lodged in, or judg-  
4 ment issued by, a United States District Court, or any  
5 administrative settlement or order entered into or issued  
6 by the United States or any State, before the date of the  
7 enactment of this Act.

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