

SECOND REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1970
93RD GENERAL ASSEMBLY

Reported from the Special Committee on Agri-Business April 12, 2006 with recommendation that House Committee Substitute for House Bill No. 1970 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules April 19, 2006 with recommendation that House Committee Substitute for House Bill No. 1970 Do Pass with no time limit for debate.

Taken up for Perfection April 26, 2006. House Committee Substitute for House Bill No. 1970 ordered Perfected and printed.

STEPHEN S. DAVIS, Chief Clerk

5532L.03P

AN ACT

To repeal sections 260.546 and 537.353, RSMo, and to enact in lieu thereof two new sections relating to mitigation of property damage or destruction.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 260.546 and 537.353, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 260.546 and 537.353, to read as follows:

260.546. 1. In the event that a hazardous substance release occurs for which a political
2 subdivision or volunteer fire protection association as defined in section 320.300, RSMo,
3 provides emergency services, the person having control over a hazardous substance shall be
4 liable for such reasonable **and necessary** cleanup costs incurred by the political subdivision or
5 volunteer fire protection association. Such liability includes the cost of materials, supplies and
6 contractual services actually used to [secure an emergency situation] **clean up the release of a**
7 **hazardous substance**. The liability may also include the cost for contractual services which are
8 not routinely provided by the department or political subdivision or volunteer fire protection
9 association. Such liability shall not include the cost of normal services which otherwise would
10 have been provided. Such liability shall not include budgeted administrative costs or the costs

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 for duplicate services if multiple response teams are requested by the department or political
12 subdivision unless, in the opinion of the department or political subdivision, duplication of
13 service was required to protect the public health and environment. [Such liability shall be
14 established upon receipt by] **No later than sixty days after the completion of the cleanup of**
15 **the release of a hazardous substance the political subdivision or volunteer fire protection**
16 **association shall submit to** the person having control of the spilled hazardous substance [of]
17 an itemized statement of costs provided by the political subdivision.

18 2. Full payment shall be made within thirty days of receipt of the cost statement unless
19 the person having control over the hazardous substance contests the amount of the costs pursuant
20 to this section. If the person having control over the hazardous substance elects to contest the
21 payment of such costs, [he] **such person** shall file an appeal with the director within thirty days
22 of receipt of the cost statement.

23 3. Upon receipt of such an appeal, the director shall notify the parties involved of the
24 appeal and collect such evidence from the parties involved as [he] **the director** deems necessary
25 to make a determination of reasonable cleanup costs. **The burden of proof shall be on the**
26 **political subdivision or volunteer fire protection district to document and justify such**
27 **cleanup costs allowed under subsection 1 of this section.** Within [thirty] **sixty** days of
28 notification of the appeal, the director shall notify the parties of his **or her** decision. The director
29 shall direct the person having control over a hazardous substance to pay those costs [he] **the**
30 **director** finds to be reasonable and appropriate. The determination of the director shall become
31 final thirty days after receipt of the notice by the parties involved unless prior to such date one
32 of the involved parties files a petition for judicial review pursuant to chapter 536, RSMo.

33 4. The political subdivision or volunteer fire protection association may apply to the
34 department for reimbursement from the hazardous waste fund created in section 260.391 for the
35 costs for which the person having control over a hazardous substance shall be liable if the
36 political subdivision or volunteer fire protection association is able to demonstrate a need for
37 immediate relief for such costs and believes it will not receive prompt payment from the person
38 having control over a hazardous substance. When the liability owed to the political subdivision
39 or volunteer fire protection association by the person having control over a hazardous substance
40 is paid, the political subdivision or volunteer fire protection association shall reimburse the
41 department for any payment it has received from the hazardous waste fund. Such reimbursement
42 to a political subdivision or volunteer fire protection association by the department shall be paid
43 back to the department by the political subdivision or volunteer fire protection association within
44 that time limit imposed by the department notwithstanding failure of the person having control
45 over a hazardous substance to reimburse the political subdivision or volunteer fire protection
46 association within that time.

47 **5. Notwithstanding any provision of this section to the contrary, any owner, as**
48 **defined in section 537.297, RSMo, of anhydrous ammonia shall not be liable for cleanup**
49 **costs as a result of an anhydrous ammonia release by a tamperer, as defined in section**
50 **537.297, RSMo.**

 537.353. 1. Any person or entity who knowingly damages or destroys any field crop
2 product that is grown for personal or commercial purposes, or for testing or research purposes
3 in the context of a product development program in conjunction or coordination with a private
4 research facility, a university, or any federal, state or local government agency, shall be liable for
5 double damages pursuant to this section.

6 **2. Notwithstanding the provisions of section 537.340, or the provisions of subsection**
7 **1 of this section, any person or entity who negligently commits any of the acts described in**
8 **subsection 1 of this section shall be liable only for compensatory damages.**

9 **3.** In awarding damages pursuant to **subsections 1 and 2 of** this section, the courts shall
10 consider the following:

- 11 (1) The market value of the crop prior to damage or destruction; and
12 (2) The actual damages involving production, research, testing replacement and crop
13 development costs directly related to the crop that has been damaged or destroyed.

14 **[3.] 4.** In addition, the court may award court costs, including reasonable attorneys fees.

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