

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 315**  
**94TH GENERAL ASSEMBLY**

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Reported from the Special Committee on Agri-Business April 25, 2007 with recommendation that House Committee Substitute for Senate Bill No. 315 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

1293L.02C

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**AN ACT**

To repeal sections 260.546, 537.353, and 640.703, RSMo, and to enact in lieu thereof four new sections relating to liability for agricultural damage or destruction.

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

Section A. Sections 260.546, 537.353, and 640.703, RSMo, are repealed and four new  
2 sections enacted in lieu thereof, to be known as sections 260.546, 537.353, 640.703, and  
3 640.712, 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 [cleanup] **and necessary** costs incurred by the political subdivision  
5 or volunteer fire protection association **incurred while securing an emergency situation or**  
6 **cleaning up any hazardous substances.** Such liability includes the cost of materials[,] **and**  
7 supplies [and contractual services] actually used to secure [an] **the** emergency situation. The  
8 liability may also include the cost for contractual services which are not routinely provided by  
9 the department or political subdivision or volunteer fire protection association. Such liability  
10 shall not include the cost of normal services which otherwise would have been provided. Such  
11 liability shall not include budgeted administrative costs or the costs for duplicate services if  
12 multiple response teams are requested by the department or political subdivision unless, in the  
13 opinion of the department or political subdivision, duplication of service was required to protect

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.

14 the public health and environment. [Such liability shall be established upon receipt by] **No later**  
15 **than sixty days after the completion of the cleanup of the release of a hazardous substance**  
16 **the political subdivision or volunteer fire protection association shall submit to** the person  
17 having control of the spilled hazardous substance [of] an itemized statement of costs provided  
18 by the political subdivision. **The statement of costs shall include but not be limited to an**  
19 **explanation of why the costs were reasonable and necessary. The explanation shall**  
20 **describe how such costs were not duplicative, did not include costs for normal services that**  
21 **would otherwise have been provided, and why contractual services, if any, were utilized**  
22 **in the response to the emergency situation.**

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

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

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

50 over a hazardous substance to reimburse the political subdivision or volunteer fire protection  
51 association within that time.

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.  
640.703. For the purposes of sections 640.700 to 640.755, the following terms mean:

2       (1) "Animal units", shall be defined by rules of the department in effect as of January 30,  
3 1996;

4       (2) "Animal waste wet handling facility", includes all gravity outfall lines, recycle pump  
5 stations, recycle force mains and appurtenances;

6       (3) "Class IA", any concentrated animal feeding operation with a capacity of seven  
7 thousand animal units or more;

8       (4) "Class IB", any concentrated animal feeding operation with a capacity between three  
9 thousand animal units and six thousand nine hundred and ninety-nine animal units inclusive;

10       (5) "Class IC", any concentrated animal feeding operation with a capacity between one  
11 thousand animal units and two thousand nine hundred and ninety-nine animal units inclusive;

12       (6) "Class II", any concentrated animal feeding operation with a capacity of at least three  
13 hundred animal units, but less than one thousand animal units;

14       (7) "Department", the department of natural resources;

15       (8) "Facility", any class IA concentrated animal feeding operation which uses a flush  
16 system;

17       (9) "Flush system", a system of moving or removing manure utilizing liquid as the  
18 primary agent as opposed to a primarily mechanical or automatic device;

19 (10) "Sensitive areas", areas in the watershed located within five miles upstream of any  
20 stream or river drinking water intake structure, other than those intake structures on the Missouri  
21 and Mississippi rivers;

22 (11) "Voluntarily regulated facility", any animal feeding operation or concentrated  
23 animal feeding operation with a capacity of less than one thousand animal units which  
24 voluntarily applies with the department to be regulated and which is not otherwise  
25 required by law to have a class II permit due to the facility's discharge of pollutants into  
26 waters of the state.

640.712. 1. The department shall promulgate rules regulating the establishment,  
2 permitting, design, construction, operation, and management of voluntarily regulated  
3 facilities.

4 2. No facility which is eligible to become a voluntarily regulated facility shall be  
5 required to obtain a construction or operating permit. At such time that an eligible facility  
6 applies with the department to become a voluntarily regulated facility, the department  
7 shall have the authority and jurisdiction to regulate the permitting, design, construction,  
8 operation, and management of such facility.

9 3. Such rules shall be designed to afford a prudent degree of environmental  
10 protection while accommodating modern agricultural practices.

11 4. Any permit issued to a facility smaller than class I prior to the effective date of  
12 this section shall remain in full force and effect until its expiration or is otherwise  
13 disciplined or revoked by the department consistent with this chapter. Such permit shall  
14 be considered a permit issued to a voluntarily regulated facility under this section.

15 5. The terms and conditions of an expired permit issued under this section are  
16 continued automatically and remain fully effective and enforceable pending issuance of a  
17 new permit if:

18 (1) The permittee has submitted a timely and sufficient application for a new permit  
19 under this section; and

20 (2) The department is unable, through no fault of the permittee, to issue a new  
21 permit before the expiration date of the previous permit.

22 6. Any permit issued under this section shall not be terminated by the permittee  
23 until such time that the permit expires, the ownership of the facility changes, or with leave  
24 of the department.

25 7. The provisions of this section shall not be construed to cause an otherwise eligible  
26 voluntarily regulated facility to become ineligible for state revolving loan funds.

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