

HOUSE BILL 739

M3, D3

11r2227
CF SB 524

By: **The Speaker (By Request – Office of the Attorney General)**

Introduced and read first time: January 26, 2021

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Multidefendant Oil and Hazardous Substance Pollution Cases**
3 **– Effect of Settlement**

4 FOR the purpose of exempting certain types of pollution cases from the Maryland Uniform
5 Contribution Among Joint Tort–Feasors Act; requiring the factfinder in certain legal
6 actions to make a determination of the total liability and assign comparative
7 responsibility to certain parties; authorizing the State to continue to pursue certain
8 legal actions or bring new legal actions if the State has obtained less than complete
9 relief from a certain person who has resolved the person’s liability with the State in
10 a settlement; providing that a certain person is not liable for certain claims under
11 certain circumstances; providing for the effect of a settlement that resolves the
12 liability of a particular person with the State; authorizing a certain person to seek
13 contribution from certain other persons pursuant to certain provisions of law; and
14 generally relating to legal actions involving oil or hazardous substance pollution.

15 BY repealing and reenacting, without amendments,
16 Article – Environment
17 Section 4–401(a) and (j) and 7–201(a) and (t)(1)
18 Annotated Code of Maryland
19 (2013 Replacement Volume and 2020 Supplement)

20 BY adding to
21 Article – Environment
22 Section 4–421
23 Annotated Code of Maryland
24 (2013 Replacement Volume and 2020 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Environment
27 Section 7–221
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2013 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Environment

4–401.

(a) In this subtitle the following words have the meanings indicated.

(j) (1) “Person responsible for the discharge” includes:

(i) The owner of the discharged oil;

(ii) The owner, operator, or person in charge of the oil storage facility, vessel, barge, or vehicle involved in the discharge at the time of or immediately before the discharge; and

(iii) Any other person who through act or omission causes the discharge.

(2) “Person responsible for the discharge” does not include:

(i) A person who, without participating in the management of an underground oil storage tank, and who otherwise is not engaged in petroleum production, refining, or marketing, holds indicia of ownership in an underground oil storage tank primarily to protect its security interest in that underground oil storage tank if that person:

1. Has not foreclosed on its security interest in the underground oil storage tank; or

2. Abandoned that underground oil storage tank under regulations of the Department within 180 days of acquiring the tank through foreclosure or other means;

(ii) A holder of a mortgage or deed of trust who acquires title to a property that is subject to a corrective action plan approved by the Department under this subtitle provided that the holder complies with the requirements, prohibitions, and conditions of the plan;

(iii) Subject to paragraph (3) of this subsection, a lender who extends credit for the performance of removal or remedial actions conducted in accordance with requirements imposed under this title who:

1. Has not caused or contributed to a discharge of oil; and

1 2. Previous to extending that credit, is not a person
2 responsible for the discharge at the site; or

3 (iv) Subject to paragraph (3) of this subsection, a lender who takes
4 action to protect or preserve a mortgage or deed of trust on a site or a security interest in
5 property located on a site at which a discharge of oil has occurred, by stabilizing, containing,
6 removing, or preventing the discharge of oil in a manner that does not cause or contribute
7 to a discharge of oil if:

8 1. The lender provides advance written notice of its actions
9 to the Department or in the event of an emergency in which action is required within 2
10 hours, provides notice by telephone;

11 2. The lender, previous to taking the action, is not a person
12 responsible for the discharge at the site; and

13 3. The action does not violate a provision of this article.

14 (3) A lender taking action to protect or preserve a mortgage or deed of trust
15 or security interest in property located on a site, who causes or contributes to a discharge
16 of oil shall be liable solely for costs incurred in response to the discharge which the lender
17 caused or to which the lender contributed unless the lender was a person responsible for
18 the discharge before acquiring a mortgage, deed of trust, or security interest in the site or
19 property located on the site.

20 **4-421.**

21 **(A) IN THIS SECTION, “PROPORTIONATE SHARE OF LIABILITY” MEANS THE**
22 **PERCENTAGE OF COMPARATIVE RESPONSIBILITY ASSIGNED BY THE FACTFINDER TO**
23 **A SETTling PARTY IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.**

24 **(B) IN AN ACTION ARISING FROM A VIOLATION OF ANY PROVISION OF THIS**
25 **SUBTITLE OR ANY RULE, REGULATION, ORDER, OR PERMIT ISSUED IN ACCORDANCE**
26 **WITH THIS SUBTITLE, THE FACTFINDER SHALL:**

27 **(1) MAKE A DETERMINATION OF THE TOTAL LIABILITY IN THE LEGAL**
28 **ACTION, INCLUDING DAMAGES, REMOVAL COSTS, CLEANUP COSTS, AND ALL OTHER**
29 **AVAILABLE RELIEF; AND**

30 **(2) ASSIGN COMPARATIVE RESPONSIBILITY TO ALL PARTIES JOINED**
31 **IN THE LEGAL ACTION, INCLUDING ALL PLAINTIFFS, DEFENDANTS, THIRD-PARTY**
32 **DEFENDANTS, INTERVENORS, AND OTHER NAMED PARTIES.**

33 **(C) IF THE STATE HAS OBTAINED LESS THAN COMPLETE RELIEF FROM A**
34 **PERSON RESPONSIBLE FOR THE DISCHARGE WHO HAS RESOLVED THE PERSON’S**

1 LIABILITY TO THE STATE IN A SETTLEMENT, THE STATE MAY:

2 (1) CONTINUE TO PURSUE AN ONGOING LEGAL ACTION AGAINST ANY
3 OTHER PERSON RESPONSIBLE FOR THE DISCHARGE WHO HAS NOT RESOLVED THE
4 PERSON'S LIABILITY; OR

5 (2) BRING A NEW ACTION AGAINST ANY OTHER PERSON RESPONSIBLE
6 FOR THE DISCHARGE WHO HAS NOT RESOLVED THE PERSON'S LIABILITY.

7 (D) (1) IF A PERSON RESPONSIBLE FOR THE DISCHARGE RESOLVES THE
8 PERSON'S LIABILITY TO THE STATE IN A SETTLEMENT, THE PERSON SHALL NOT BE
9 LIABLE FOR CLAIMS FOR NONCONTRACTUAL CONTRIBUTION OR INDEMNITY
10 REGARDING ANY MATTER OR CLAIM ADDRESSED IN THE SETTLEMENT, INCLUDING
11 ANY STATUTORY OR COMMON LAW CLAIM.

12 (2) A SETTLEMENT THAT RESOLVES THE LIABILITY OF A PARTICULAR
13 PERSON RESPONSIBLE FOR THE DISCHARGE:

14 (i) DOES NOT RELEASE FROM LIABILITY ANY OTHER PERSON
15 RESPONSIBLE FOR THE DISCHARGE EXCEPT AS SPECIFICALLY PROVIDED BY THE
16 TERMS OF THE SETTLEMENT; BUT

17 (ii) REDUCES THE POTENTIAL LIABILITY OF OTHER PERSONS
18 RESPONSIBLE FOR THE DISCHARGE BY THE SETTLING PERSON'S PROPORTIONATE
19 SHARE OF LIABILITY FOR ALL SETTLED CLAIMS, INCLUDING ALL STATUTORY AND
20 COMMON LAW CLAIMS.

21 (E) A PERSON RESPONSIBLE FOR THE DISCHARGE WHO HAS RESOLVED THE
22 PERSON'S LIABILITY TO THE STATE IN A SETTLEMENT OR THROUGH THE
23 SATISFACTION OF A JUDGMENT MAY SEEK CONTRIBUTION FROM ANY OTHER
24 PERSON RESPONSIBLE FOR THE DISCHARGE WHO HAS NOT SETTLED THE OTHER
25 PERSON'S LIABILITY TO THE STATE IN ACCORDANCE WITH THIS SECTION OR § 7-221
26 OF THIS ARTICLE.

27 7-201.

28 (a) In this subtitle the following words have the meanings indicated.

29 (t) (1) "Responsible person" means any person who:

30 (i) Is the owner or operator of a vehicle or a site containing a
31 hazardous substance;

32 (ii) At the time of disposal of any hazardous substance, was the

1 owner or operator of any site at which the hazardous substance was disposed;

2 (iii) By contract, agreement, or otherwise, arranged for disposal or
3 treatment, or arranged with a transporter for transport for disposal or treatment, of a
4 hazardous substance owned or possessed by such person, by any other party or entity, at
5 any site owned or operated by another party or entity and containing such hazardous
6 substances; or

7 (iv) Accepts or accepted any hazardous substance for transport to a
8 disposal or treatment facility or any sites selected by the person.

9 7-221.

10 (a) All expenditures from the State Hazardous Substance Control Fund made by
11 the Department under § 7-220(b) of this subtitle in response to a release or a threatened
12 release of a hazardous substance at a particular site shall be reimbursed to the Department
13 for the State Hazardous Substance Control Fund by the responsible person for the release
14 or the threatened release.

15 (b) (1) In addition to any other legal action authorized by this subtitle, the
16 Attorney General may bring an action to recover costs and interest from any responsible
17 person who fails to make a reimbursement as required under subsection (a) of this section.

18 (2) (i) In an action under paragraph (1) of this subsection to recover
19 costs, the State shall make a good faith effort to identify and seek recovery against all
20 responsible persons.

21 (ii) The State shall seek recovery on an apportionment basis in
22 accordance with a person's contribution to the situation or problem, when there is a
23 reasonable basis for determining the contribution of a responsible person.

24 (iii) Reimbursement in any other case shall not be apportioned.

25 (c) The Department may recover costs for the Fund resulting from releases or
26 threatened releases of hazardous substances whether or not the hazardous substance was
27 placed at the site, released, or threatened to be released before July 1, 1985.

28 (d) [Except as otherwise provided in subsection (b) of this section, a person who
29 is liable for a release or threatened release of a hazardous substance under this subtitle is
30 subject to the Uniform Contribution Among Tort-Feasors Act under Title 3, Subtitle 14 of
31 the Courts Article, including a right of contribution, as if that person had caused an injury
32 in tort.

33 (e)] A responsible person against whom a legal action is brought under subsection
34 (b) of this section for a release or threatened release of a hazardous substance may move to
35 join any other responsible person under the Maryland Rules.

1 **[(f)] (E)** Upon request by the Department, and after reasonable notice, a person
2 shall provide to the Department any existing information or documents relating to:

3 (1) The identification, nature, and quantity of any hazardous substance
4 which is or has been generated, treated, stored, or disposed of at a site or facility, or
5 transported to a site or facility; and

6 (2) The nature or extent of a release of a hazardous substance at or from a
7 site or facility.

8 **(F) (1) IN THIS SUBSECTION, “PROPORTIONATE SHARE OF THE**
9 **LIABILITY” MEANS THE PERCENTAGE OF COMPARATIVE RESPONSIBILITY ASSIGNED**
10 **BY THE FACTFINDER TO A SETTLING PARTY IN ACCORDANCE WITH PARAGRAPH (2)**
11 **OF THIS SUBSECTION.**

12 **(2) IN AN ACTION UNDER SUBSECTION (B) OF THIS SECTION, THE**
13 **FACTFINDER SHALL:**

14 **(I) MAKE A DETERMINATION OF THE TOTAL LIABILITY IN THE**
15 **LEGAL ACTION, INCLUDING COSTS, EXPENDITURES, AND INTEREST AVAILABLE**
16 **UNDER THIS SUBTITLE AND ALL OTHER AVAILABLE RELIEF; AND**

17 **(II) ASSIGN COMPARATIVE RESPONSIBILITY TO ALL PARTIES**
18 **JOINED IN THE LEGAL ACTION, INCLUDING ALL PLAINTIFFS, DEFENDANTS,**
19 **THIRD-PARTY DEFENDANTS, INTERVENORS, AND OTHER NAMED PARTIES.**

20 **(3) (I) IF A RESPONSIBLE PERSON RESOLVES THE PERSON’S**
21 **LIABILITY FOR A VIOLATION OF THIS SUBTITLE TO THE STATE IN A SETTLEMENT,**
22 **THE PERSON SHALL NOT BE LIABLE FOR CLAIMS FOR NONCONTRACTUAL**
23 **CONTRIBUTION OR INDEMNITY REGARDING ANY MATTER OR CLAIM ADDRESSED IN**
24 **THE SETTLEMENT, INCLUDING ANY STATUTORY OR COMMON LAW CLAIM.**

25 **(II) A SETTLEMENT THAT RESOLVES THE LIABILITY OF A**
26 **PARTICULAR RESPONSIBLE PERSON:**

27 **1. DOES NOT RELEASE FROM LIABILITY ANY OTHER**
28 **RESPONSIBLE PERSON EXCEPT AS SPECIFICALLY PROVIDED BY THE TERMS OF THE**
29 **SETTLEMENT; BUT**

30 **2. REDUCES THE POTENTIAL LIABILITY OF OTHER**
31 **RESPONSIBLE PERSONS BY THE SETTLING PERSON’S PROPORTIONATE SHARE OF**
32 **THE LIABILITY FOR ALL SETTLED CLAIMS, INCLUDING ALL STATUTORY AND**
33 **COMMON LAW CLAIMS.**

1 **(4) A RESPONSIBLE PERSON WHO HAS RESOLVED THE PERSON'S**
2 **LIABILITY TO THE STATE IN A SETTLEMENT OR THROUGH THE SATISFACTION OF A**
3 **JUDGMENT MAY SEEK CONTRIBUTION FROM ANY OTHER RESPONSIBLE PERSON**
4 **WHO HAS NOT SETTLED THE OTHER PERSON'S LIABILITY TO THE STATE IN**
5 **ACCORDANCE WITH THIS SECTION OR § 4-421 OF THIS ARTICLE.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
7 apply retroactively to all legal actions pending on the effective date of this Act.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
9 1, 2021.