

CHAPTER.....

AN ACT relating to certain hazardous materials; revising provisions governing the disposal of certain hazardous materials; revising provisions governing motor carriers who transport certain hazardous materials; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 459.500 is hereby amended to read as follows:

459.500 1. Except as otherwise provided in NRS 459.700 to 459.780, inclusive, or 459.800 to 459.856, inclusive:

(a) Regulations of the commission must provide:

(1) For safety in the packaging, handling, transportation and disposal of hazardous waste ; ~~including the safety of vehicles and drivers;~~

(2) For the certification of consultants involved in consultation regarding the response to and the clean up of leaks of hazardous waste, hazardous material or a regulated substance from underground storage tanks, the clean up of spills of or accidents involving hazardous waste, hazardous material or a regulated substance, or the management of hazardous waste; and

(3) That a person employed full time by a business to act as such a consultant is exempt from the requirements of certification ~~if:~~

~~(I) If he is certified by the federal Occupational Safety and Health Administration;~~ *if the person:*

(I) Meets the applicable requirements of 29 C.F.R. § 1910.120 to manage such waste, materials or substances; and

(II) ~~While~~ *Is* acting in the course of that full-time employment.

(b) Regulations of the commission may:

(1) Provide for the licensing and other necessary regulation of generators, including shippers ~~if brokers and carriers, both intrastate and interstate;~~ *and brokers,* who cause that waste to be transported into or through Nevada or for disposal in Nevada;

(2) Require that the person responsible for a spill, leak or accident involving hazardous waste, hazardous material or a regulated substance, obtain advice on the proper handling of the spill, leak or accident from a consultant certified under the regulations adopted pursuant to paragraph (a); and

(3) Establish standards relating to the education, experience, performance and financial responsibility required for the certification of consultants.

2. The regulations may include provisions for:

(a) Fees to pay the cost of inspection, certification and other regulation, excluding any activities conducted pursuant to NRS 459.7052 to 459.728, inclusive; and

(b) Administrative penalties of not more than \$2,500 per violation or \$10,000 per shipment for violations by persons licensed by the department, and the criminal prosecution of violations of its regulations by persons who are not licensed by the department.

3. Designated employees of the department and the Nevada highway patrol division shall enforce the regulations of the commission relating to the transport and handling of hazardous waste ~~[- as they affect the safety of drivers and vehicles]~~ and the leakage or spill of that waste from packages.

Sec. 2. NRS 459.7058 is hereby amended to read as follows:

459.7058 1. Except as otherwise required by federal law, the department shall immediately suspend or revoke the registration and permit for the transportation of hazardous materials, or deny the approval of an application for such a registration and permit, by a motor carrier who:

(a) Knowingly makes a materially false or misleading statement on the application for the registration and permit;

(b) Is assigned an unsatisfactory safety rating pursuant to 49 C.F.R. Part 385;

(c) Is subject to an order entered pursuant to 49 C.F.R. § 386.72;

(d) Does not maintain the financial responsibility for liability required pursuant to 49 C.F.R. Part 387 and the laws of this state;

(e) Knowingly uses a forged certificate of registration or permit for the transportation of hazardous materials;

(f) Knowingly allows the use of his registration or permit for the transportation of hazardous materials by any person other than an agent or employee of the motor carrier; or

(g) Is convicted of a serious violation or repeated violations of the laws of this state for the regulation of ~~[-common, contract or private]~~ motor carriers ~~[-of property-]~~.

2. Upon taking any action pursuant to subsection 1, the department shall:

(a) Notify the motor carrier, by certified mail, of the reasons for its action and of any action the motor carrier may take to obtain the reinstatement of his registration and permit or the approval of his application; and

(b) Provide the motor carrier with an opportunity for a fair and impartial hearing on the matter.

Sec. 3. NRS 459.706 is hereby amended to read as follows:

459.706 1. The department shall not issue a permit required pursuant to NRS 459.7052 to a ~~[-common, contract or private]~~ motor carrier ~~[-of property-]~~ who is seeking to transport radioactive waste upon a public highway of this state without first determining that the carrier transporting the waste is in compliance and will continue to comply with all laws and regulations of this state and the Federal Government respecting the handling and transportation of radioactive waste and the safety of drivers and vehicles.

2. Any ~~[-common, contract or private]~~ motor carrier ~~[-of property-]~~ who maintains his books and records outside of this state must, in addition to any other assessments and fees provided by law, be assessed by the department for an amount equal to the travel expenses, including the excess of the out-of-state subsistence allowances over the in-state subsistence allowances, as fixed by NRS 281.160, of employees of the department for investigations, inspections and audits which may be required to be performed outside of this state in carrying out the provisions of subsection 1.

3. The assessment provided for in subsection 2 must be determined by the department upon the completion of each such investigation, inspection or audit and is due within 30 days after the date on which the affected ~~common, contract or private~~ motor carrier receives the assessment. The records of the department relating to the additional costs incurred by reason of necessary travel must be open for inspection by the affected carrier at any time within the 30-day period.

Sec. 4. NRS 459.708 is hereby amended to read as follows:

459.708 1. A ~~common, contract or private~~ motor carrier ~~of property~~ who is transporting radioactive waste shall reject any package containing the waste which is tendered to him for transport in this state if the package:

- (a) Is leaking or spilling its contents;
- (b) Does not bear a:

(1) ~~Mark~~ **Marking** required pursuant to 49 C.F.R. Part 172, Subpart D;

(2) Label required pursuant to 49 C.F.R. Part 172, Subpart E; or

(3) Placard required pursuant to 49 C.F.R. Part 172, Subpart F; or

- (c) Is not accompanied by a:

(1) Shipping paper required pursuant to 49 C.F.R. Part 172, Subpart C; or

(2) Manifest required pursuant to 10 C.F.R. Part 20, Appendix G.

2. A carrier who accepts radioactive waste for transport in this state is liable for any package in his custody which leaks or spills its contents, does not bear the required ~~mark~~ **marking**, label or placard, or is not accompanied by the required shipping paper or manifest, unless, in the case of a leak or spill of the waste and by way of affirmative defense, the carrier proves that he did not and could not know of the leak when he accepted the package for transport.

Sec. 5. NRS 459.709 is hereby amended to read as follows:

459.709 1. A ~~common, contract or private~~ motor carrier ~~of property~~ shall not transport any high-level radioactive waste or spent nuclear fuel upon a public highway of this state unless:

(a) The high-level radioactive waste or spent nuclear fuel is contained in a package that has been approved for that purpose pursuant to 10 C.F.R. Part 71; and

(b) The carrier has complied with the provisions of 10 C.F.R. Part 71 and 10 C.F.R. Part 73 requiring the advance notification of the governor of this state or his designee.

2. As used in this section:

(a) "High-level radioactive waste" has the meaning ascribed to it in 10 C.F.R. § 72.3.

(b) "Spent nuclear fuel" has the meaning ascribed to it in 10 C.F.R. § 72.3.

Sec. 6. NRS 459.718 is hereby amended to read as follows:

459.718 1. A person responsible for the care, custody or control of a hazardous material which is involved in an accident or incident occurring during the transportation of the hazardous material by **a** motor carrier, including any accident or incident occurring during any loading, unloading or temporary storage of the hazardous material while it is subject to active

shipping papers and before it has reached its ultimate consignee, shall notify the division, *consistent with the requirements of 49 C.F.R. § 171.15*, as soon as practicable if, as a result of the hazardous material:

- (a) A person is killed;
- (b) A person receives injuries that require hospitalization;
- (c) Any damage to property exceeds \$50,000;
- (d) There is an evacuation of the general public for 1 hour or more;
- (e) One or more major transportation routes or facilities are closed or shut down for 1 hour or more;
- (f) There is an alteration in the operational flight pattern or routine of any aircraft;
- (g) Any radioactive contamination is suspected;
- (h) Any contamination by an infectious substance is suspected;
- (i) There is a release of a liquid marine pollutant in excess of 450 liters or a solid marine pollutant in excess of 400 kilograms; or
- (j) Any situation exists at the site of the accident or incident which, in the judgment of the person responsible for the care, custody or control of the hazardous material, should be reported to the division.

2. The notification required pursuant to this section must include:

- (a) The name of the person providing the notification;
- (b) The name and address of the motor carrier represented by that person;
- (c) The telephone number where that person can be contacted;
- (d) The date, time and location of the accident or incident;
- (e) The extent of any injuries;
- (f) The classification, name and quantity of the hazardous material involved, if that information is available; and
- (g) The type of accident or incident, the nature of the hazardous material involved and whether there is a continuing danger to life at the scene of the accident or incident.

3. A person may satisfy the requirements of this section by providing the information specified in subsection 2 to the person who responds to a telephone call placed to:

- (a) The number 911 in an area where that number is used for emergencies; or
- (b) The number zero in an area where the number 911 is not used for emergencies.

Sec. 7. NRS 459.735 is hereby amended to read as follows:

459.735 1. The contingency account for hazardous materials is hereby created in the state general fund.

2. The commission shall administer the contingency account for hazardous materials, and the money in the account may be expended only for:

- (a) Carrying out the provisions of NRS 459.735 to 459.773, inclusive;
- (b) Carrying out the provisions of ~~Public Law 99-499 and Title I of Public Law 93-633;~~ *42 U.S.C. §§ 11001 et seq. and 49 U.S.C. §§ 5101 et seq.;*
- (c) Maintaining and supporting the operations of the commission and local emergency planning committees;

(d) Training and equipping state and local personnel to respond to accidents and incidents involving hazardous materials; and

(e) The operation of training programs and a training center for handling emergencies relating to hazardous materials and related fires pursuant to NRS 477.045.

3. All money received by this state ~~as a result of Public Law 99-499 or Title I of Public Law 93-633~~ pursuant to 42 U.S.C. §§ 11001 et seq. or 49 U.S.C. §§ 5101 et seq. must be deposited with the state treasurer to the credit of the contingency account for hazardous materials. In addition, all money received by the commission from any source must be deposited with the state treasurer to the credit of the contingency account for hazardous materials. The state controller shall transfer from the contingency account to the operating account of the state fire marshal such money collected pursuant to chapter 477 of NRS as is authorized for expenditure in the budget of the state fire marshal for use pursuant to paragraph (e) of subsection 2.

4. Upon the presentation of budgets in the manner required by law, money to support the operation of the commission pursuant to this chapter, other than its provision of grants, must be provided by direct legislative appropriation from the state highway fund to the contingency account for hazardous materials.

5. The interest and income earned on the money in the contingency account for hazardous materials, after deducting any applicable charges, must be credited to the account.

6. All claims against the contingency account for hazardous materials must be paid as other claims against the state are paid.

Sec. 8. NRS 459.738 is hereby amended to read as follows:

459.738 1. The state emergency response commission is hereby created for the purpose of carrying out the provisions of ~~NRS 414.135, Public Law 99-499~~ 42 U.S.C. §§ 11001 et seq. and other matters relating thereto.

2. The commission consists of not more than 25 members appointed by the governor. The governor shall, to the extent practicable, appoint persons to the commission who have technical expertise in responding to emergencies.

3. The term of each member of the commission is 4 years. A member may be reappointed, and there is no limit on the number of terms that a member may serve.

4. The governor shall appoint one or more of the members of the commission to serve as chairman or co-chairmen.

5. The commission may employ, within the limits of legislative appropriations, such staff as is necessary to the performance of its duties.

Sec. 9. NRS 459.740 is hereby amended to read as follows:

459.740 The commission may:

1. Adopt regulations for the purpose of enforcing its responsibilities pursuant to ~~Public Law 99-499~~ 42 U.S.C. §§ 11001 et seq.

2. Accept gifts and grants of money and other revenues for the purpose of enforcing its responsibilities pursuant to ~~Public Law 99-499~~ 42 U.S.C. §§ 11001 et seq.

Sec. 10. NRS 459.742 is hereby amended to read as follows:

459.742 The commission, in carrying out its duties and within the limits of legislative appropriations and other available money, may:

1. Enter into contracts, leases or other agreements or transactions;
2. Provide grants of money to local emergency planning committees to improve their ability to respond to emergencies involving hazardous materials;
3. Assist with the development of comprehensive plans for responding to such emergencies in this state;
4. Provide technical assistance and administrative support to the telecommunications unit of the communication and computing division of the department of information technology for the development of systems for communication during such emergencies;
5. Provide technical and administrative support and assistance for training programs;
6. Develop a system to provide public access to data relating to hazardous materials;
7. Support any activity or program eligible to receive money from the contingency account for hazardous materials;
8. Adopt regulations setting forth the manner in which the division of emergency management of the department ~~{of motor vehicles and public safety}~~ shall:
 - (a) Allocate money received by the division which relates to hazardous materials or is received pursuant to ~~{Public Law 99-499 or Title I of Public Law 93-633;}~~ *42 U.S.C. §§ 11001 et seq. or 49 U.S.C. §§ 5101 et seq.*; and
 - (b) Approve programs developed to address planning for and responding to emergencies involving hazardous materials; and
9. Coordinate the activities administered by state agencies to carry out the provisions of chapter 459 of NRS, ~~{Public Law 99-499 and Title I of Public Law 93-633;}~~ *42 U.S.C. §§ 11001 et seq. and 49 U.S.C. §§ 5101 et seq.*

Sec. 11. NRS 459.744 is hereby amended to read as follows:

459.744 1. The commission shall establish by regulation:

- (a) A schedule of fees for its services and regulatory activities. The fees must be set at an amount which approximates the cost to the commission of performing those services and activities.
- (b) A fee, not to exceed \$5,000 per year, to be paid by each person who stores an extremely hazardous material in an amount greater than the threshold planning quantity established for such material in ~~{Appendix A or B of Part 355 of Title 40 of the Code of Federal Regulations;}~~ *40 C.F.R. Part 355, Appendix A or B*. The fee must include:
 - (1) A filing fee for each facility in which such material is stored; and
 - (2) A surcharge for each ton of such material stored in excess of 1 ton,and must be paid on or before March 1 of each year for the preceding calendar year.
- (c) A fee, not to exceed \$2,000 per year, to be paid by each person who manufactures for transport an extremely hazardous material in an amount greater than the threshold planning quantity established for such material in

~~{Appendix A or B of Part 355 of Title 40 of the Code of Federal Regulations.}~~ **40 C.F.R. Part 355, Appendix A or B.** The fee must include:

(1) A filing fee for each facility in which such material is manufactured; and

(2) A surcharge for each ton of such material which is manufactured for transport in this state, and must be paid on or before January 31 of each year for the preceding calendar year.

(d) A reporting fee of \$500 to be paid by each person who is required to submit a toxic chemical release form pursuant to ~~{Public Law 99-499,}~~ **42 U.S.C. §§ 11001 et seq.**, which becomes due upon the filing of the form.

2. The commission shall not require any person to pay more than \$5,000 in fees imposed pursuant to subsection 1 for any calendar year.

Sec. 12. NRS 459.792 is hereby amended to read as follows:

459.792 1. The state emergency response commission, each local emergency planning committee appointed by the commission, and their respective members are immune from liability for the death of or injury to persons, and for injury to property, resulting from the performance of their functions under this chapter and under ~~{Public Law 99-499 as that law existed on January 1, 1993.}~~ **42 U.S.C. §§ 11001 et seq.**

2. Except as limited by NRS 459.794 and 459.796, a person who provides equipment, advice or other assistance in mitigating or attempting to mitigate the effects of a discharge of hazardous material, or in preventing, cleaning up, or disposing of such a discharge, or in attempting to prevent, clean up, or dispose of such a discharge, is immune from liability for the death of or injury to persons, and for injury to property, resulting from those activities.

Sec. 13. NRS 459.7012, 459.7014 and 459.7028 are hereby repealed.