

AMENDED IN SENATE JUNE 20, 2006

AMENDED IN SENATE JUNE 22, 2005

AMENDED IN ASSEMBLY MAY 26, 2005

AMENDED IN ASSEMBLY APRIL 25, 2005

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 766

Introduced by Assembly Member Chavez Coto
(Principal coauthor: Senator Cedillo)

February 18, 2005

~~An act to amend Section 123285 of, and to add Section 123311 to, the Health and Safety Code, relating to women, infants, and child nutrition. An act to amend Sections 25395.80, 25395.81, 25395.82, 25395.84, and 25395.86 of the Health and Safety Code, relating to hazardous materials.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 766, as amended, ~~Chavez Coto. WIC program vendors~~
Hazardous materials: liability.

Existing law, the California Land Reuse and Revitalization Act of 2004, until January 1, 2010, provides that an innocent landowner, a bona fide purchaser, or a contiguous property owner, as defined, qualifies for specified immunity from liability for response costs or damage claims with regard to a site in an urban infill area, if the innocent landowner, bona fide purchaser, or contiguous property owner meets specified conditions. The act defines the term "agency"

as meaning the Department of Toxic Substances Control, the State Water Resources Control Board, or a California regional water quality control board.

The act defines the term “applicable law” as meaning certain state statutory and common laws that impose liability on an owner or occupant of property for pollution conditions caused by a release or threatened release of hazardous material on, under, or adjacent to the property.

This bill would make clarifying changes with regard to the use of that term and make other technical nonsubstantive changes.

~~Existing law, the California Special Supplemental Food Program for Women, Infants, and Children (WIC), authorizes establishment of a statewide program, administered by the State Department of Health Services, for providing nutritional food supplements to low-income pregnant women, low-income postpartum and lactating women, and low-income infants and children under 5 years of age, who have been determined to be at nutritional risk. The program, which implements a program authorized under existing federal law, provides for the redemption of nutrition coupons by recipients at any authorized retail food vendor.~~

~~This bill would require the department to establish competitive price criteria and allowable reimbursement levels for WIC-only vendors, as defined, and would provide for the payment of those vendors at the average payment per voucher paid to comparable vendors, as described.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25395.80 of the Health and Safety Code
- 2 is amended to read:
- 3 25395.80. For purposes of this chapter, to qualify as a bona
- 4 fide purchaser, innocent landowner, or contiguous property
- 5 owner, a person shall establish, by a preponderance of the
- 6 evidence, all of the following conditions:
- 7 (a) On or before the date on which the person acquired the
- 8 site, the person made all appropriate inquiries into the previous
- 9 ownership and uses of the site.

1 (b) The person exercises appropriate care with respect to the
2 release or threatened release of hazardous materials at the site.

3 (c) The person provides full cooperation, assistance, and
4 access to a person who is authorized to conduct response actions
5 or natural resource restoration at the site, including the
6 cooperation and any access necessary for the installation,
7 integrity, operation, and maintenance of complete or partial
8 response actions or natural resource restoration at the site.

9 (d) The person complies with land use controls established or
10 relied on, in connection with an approved response action at the
11 site, and does not impede the effectiveness or integrity of any
12 aspect of ~~any~~ a remedy employed at the site in connection with a
13 response action.

14 (e) The person complies with all requests for information or an
15 administrative subpoena concerning the release or threatened
16 release of hazardous substances by ~~any~~ an agency with
17 jurisdiction under an applicable ~~statute~~ law.

18 (f) The person provides all notices and satisfies reporting
19 requirements required by state or federal law with respect to the
20 discovery or release of hazardous substances at the site.

21 *SEC. 2. Section 25395.81 of the Health and Safety Code is*
22 *amended to read:*

23 25395.81. (a) Except as provided in Section 25395.85, and
24 except as otherwise provided under this section, a bona fide
25 purchaser, innocent landowner, or contiguous property owner
26 who did not cause or contribute to the release at the site, qualifies
27 for the following immunities:

28 (1) The bona fide purchaser, innocent landowner, or
29 contiguous property owner is not liable under any applicable
30 ~~statute~~ law for a claim made by any person, other than an agency,
31 for response costs or other damages associated with a release or
32 threatened release of a hazardous material at the site
33 characterized in the site assessment conducted pursuant to, or a
34 response plan approved pursuant to, Article 6 (commencing with
35 Section 25395.90).

36 (2) An agency shall not take an action under an applicable
37 ~~statute~~ law to require a bona fide purchaser, innocent landowner,
38 or contiguous property owner to take a response action, other
39 than a response action required in an approved response plan,
40 with respect to the hazardous material release at a site that is

1 characterized in the site assessment conducted pursuant to, or a
2 response plan approved pursuant to Article 6 (commencing with
3 Section 25395.90), unless both of the following conditions apply:

4 (A) The conditions on the property pose an endangerment.

5 (B) The agency does one of the following:

6 (i) Makes all reasonable efforts, including taking appropriate
7 administrative enforcement actions, to compel any necessary
8 response action from other potentially responsible parties, and
9 those efforts have been unsuccessful.

10 (ii) Reasonably determines, after the exercise of reasonable
11 inquiry, that no potentially responsible party exists with
12 sufficient financial resources to perform the required response
13 action at the site.

14 (b) This section does not modify or limit the existing authority
15 of a state or local agency to impose a condition on the issuance of
16 a discretionary permit relating to the development, use, or
17 occupancy of ~~any~~ a site.

18 (c) The immunities described in this section shall attach when
19 the bona fide purchaser, innocent landowner, or contiguous
20 property owner enters into an agreement with an agency pursuant
21 to Section 25395.92 and shall remain in effect unless one of the
22 following occurs:

23 (1) The bona fide purchaser, innocent landowner, or
24 contiguous property owner receives a written notice of an
25 unapproved, material deviation from the agreement from the
26 agency.

27 (2) The bona fide purchaser, innocent landowner, or
28 contiguous property owner or an agency terminates the
29 agreement before a finding of no further action is made pursuant
30 to subdivision (b) of Section 25395.95 or a certificate of
31 completion is issued pursuant to Section 25395.97.

32 (d) A person who otherwise qualifies for immunity under this
33 chapter and who commits fraud, intentional nondisclosure, or
34 misrepresentation to an agency with respect to any requirement
35 of this chapter, does not qualify as a bona fide purchaser,
36 innocent landowner, or contiguous property owner.

37 (e) This section does not relieve a bona fide purchaser,
38 innocent landowner or contiguous property owner from
39 reporting, disclosure, and notification requirements under any
40 applicable ~~statute~~ law.

1 *SEC. 3. Section 25395.82 of the Health and Safety Code is*
2 *amended to read:*

3 25395.82. (a) Notwithstanding Sections 25395.69, 25395.70,
4 and 25395.75, on and after the date when the immunity specified
5 in subdivision (c) of Section 25395.81 attaches, the person shall
6 remain eligible for immunity if a release of hazardous materials
7 at the site during a response action is de minimis and the agency
8 determines that all necessary response actions to address the
9 release have been taken.

10 (b) Notwithstanding Sections 25395.69, 25395.70, and
11 25395.75, on and after the date when the immunity specified in
12 subdivision (c) of Section 25395.81 attaches, the person shall
13 remain eligible for immunity if either of the following occur:

14 (1) Both of the following conditions are met:

15 (A) A release of hazardous materials that poses an
16 unreasonable risk is discovered before the agency makes a
17 finding of no further action pursuant to Section 25395.95 or
18 issues a certificate of completion pursuant to Section 25395.97.

19 (B) The release specified in subparagraph (A) is appropriately
20 resolved to the satisfaction of the agency pursuant to paragraph
21 (8) of subdivision (a) of Section 25395.96.

22 (2) All of the following conditions are met:

23 (A) A release of hazardous materials that poses an
24 unreasonable risk is discovered after the agency makes a finding
25 of no further action pursuant to Section 25395.95, or issues a
26 certificate of completion pursuant to Section 25395.97.

27 (B) The innocent landowner, bona fide purchaser, or
28 contiguous property owner did not cause or contribute to the
29 release.

30 (C) The release specified in subparagraph (A) is appropriately
31 resolved to the satisfaction of the agency pursuant to paragraph
32 (8) of subdivision (a) of Section 25395.96.

33 (c) Notwithstanding Sections 25395.69, 25395.70, and
34 25395.75, on and after the date when the immunity specified in
35 subdivision (c) of Section 25395.81 attaches, the person shall
36 remain eligible for immunity obtained pursuant to this chapter
37 with regard to a release that is the subject of a finding of no
38 further action made pursuant to Section 25395.95 or a certificate
39 of completion issued pursuant to Section 25395.97. If the person
40 causes or contributes to a release of a hazardous material, that

1 person shall be responsible for responding to that release in
2 accordance with all applicable ~~statutes~~ laws.

3 (d) Notwithstanding Sections 25395.69, 25395.70, and
4 25395.75, on and after the date when the immunity specified in
5 subdivision (c) of Section 25395.81 attaches to a site and a
6 release of hazardous materials is discovered on or under the site,
7 a response action shall be conducted at the site in accordance
8 with the following:

9 (1) If the response action is for petroleum related
10 contamination caused predominately by a release from an
11 underground storage tank, the funds in the Underground Storage
12 Tank Cleanup Fund shall, to the extent permissible by law, be
13 used in accordance with Section 25299.51.

14 (2) If the response action is for a hazardous materials release
15 not otherwise subject to paragraph (1), and the agency
16 determines the hazardous material release endangers public
17 health or safety, the person who entered into the agreement with
18 the agency shall pay for, or undertake, the response action. If the
19 agency determines the hazardous materials release does not
20 endanger public health or safety, the person who entered into the
21 agreement shall not be required to pay for, or undertake, the
22 response action.

23 *SEC. 4. Section 25395.84 of the Health and Safety Code is*
24 *amended to read:*

25 25395.84. (a) A court of competent jurisdiction may award
26 reasonable attorneys' fees and experts' fees to a person who
27 initiates a claim under an applicable ~~statute~~ law for contribution
28 for, or recovery of, response costs incurred for a response action,
29 or for any other response costs incurred at a site, if the person
30 meets all of the following criteria:

31 (1) The person is a bona fide purchaser, an innocent
32 landowner, or a contiguous property owner and qualifies for
33 immunity pursuant to this chapter.

34 (2) The person is a prevailing party.

35 (3) On or before 20 calendar days prior to the date of the trial
36 on issues relating to the response costs at issue, the person serves
37 on the defendant both of the following:

38 (A) If a response plan has been approved for that site pursuant
39 to Article 6 (commencing with Section 25395.90), a copy of the
40 approved response plan.

1 (B) A written demand for compensation setting forth the
2 specific sum demanded from the defendant, including a statement
3 of the reasoning supporting the demand. The amount of written
4 demand shall include all response costs sought from the
5 defendant at issue, including all interest, but shall not include
6 litigation expenses, attorneys' fees, and experts' fees. The
7 amount of the demand may include any alleged consequential
8 damages.

9 (b) ~~In~~ In determining whether to award reasonable attorneys'
10 fees and experts' fees pursuant to this section, a court shall
11 consider the relationship of the amount of the written demand
12 described in subparagraph (B) of paragraph (3) of subdivision (a)
13 to the total sum of the response costs and, if appropriate and
14 included in the demand, the consequential damages in the written
15 demand, to the final determination of the costs and damages by
16 the trier of fact.

17 (c) A court may award reasonable attorneys' fees and experts'
18 fees to an agency that is the prevailing party in an action arising
19 out of this chapter.

20 *SEC. 5. Section 25395.86 of the Health and Safety Code is*
21 *amended to read:*

22 25395.86. (a) This chapter does not provide immunity from
23 any of the following:

- 24 (1) Liability for bodily injury or wrongful death.
- 25 (2) Any requirement imposed ~~under~~ pursuant to Chapter 6.5
26 (commencing with Section 25100), including, but not limited to,
27 corrective action and closure and postclosure requirements.
- 28 (3) Criminal acts.
- 29 (4) Permit violations.
- 30 (5) Contractual indemnity agreements between purchasers and
31 sellers of real property.
- 32 (6) New releases of hazardous materials that are caused or
33 contributed to by an innocent landowner, bona fide purchaser, or
34 contiguous property owner.

35 (b) This chapter shall not apply as a defense or immunity to
36 any action taken by a redevelopment agency pursuant to Article
37 12.5 (commencing with Section 33459) of Chapter 4 of Part 1 of
38 Division 24.

39 (c) This chapter does not limit the authority of an agency to
40 conduct a response action it determines is necessary to protect

1 public health and safety or the environment pursuant to an
2 applicable ~~statute~~ law.

3 (d) This chapter does not preclude a state or local agency that
4 is taking property by eminent domain, negotiating to acquire
5 property in lieu of taking it by eminent domain, or considering
6 the taking of property through the exercise of eminent domain
7 authority, from evaluating the impact on the value of the property
8 resulting from a release or threatened release of any hazardous
9 material, from incorporating that evaluation into any offer of
10 compensation for that property, or from presenting that
11 evaluation at a trial or other proceeding to establish the value of
12 the property.

13 (e) This chapter does not do either of the following:

14 (1) Limit a defense to liability that may be available to a
15 person under any other provision of law.

16 (2) Impose any new obligation on an owner of real property
17 other than those specifically assumed by the owner under an
18 agreement entered into pursuant to Article 6 (commencing with
19 Section 25395.90).

20 ~~SECTION 1. (a) The Legislature finds and declares all of the~~
21 ~~following:~~

22 ~~(1) The California Supplemental Food Program for Women,~~
23 ~~Infants, and Children (WIC) is a vital program for meeting the~~
24 ~~health needs of pregnant, postpartum, and lactating women,~~
25 ~~infants, and young children at nutritional risk.~~

26 ~~(2) The federal government recently enacted the “Child~~
27 ~~Nutrition and WIC Reauthorization Act of 2004.”~~

28 ~~(3) This federal act requires states to establish vendor peer~~
29 ~~groups, competitive price criteria, and maximum allowable~~
30 ~~reimbursement levels for WIC-only vendors.~~

31 ~~(4) This federal act also prohibits the competitive price~~
32 ~~criteria, and the allowable reimbursement levels established by~~
33 ~~the states from resulting in average payments per voucher to~~
34 ~~WIC-only vendors that are higher than the average payments per~~
35 ~~voucher to comparable vendors that are not WIC-only vendors.~~

36 ~~(5) In analyzing the provisions of the Reauthorization Act,~~
37 ~~Senate Report 108-279 declares that the act “provides to states~~
38 ~~broad latitude in determining the appropriate peer groups,~~
39 ~~competitive price criteria, and maximum reimbursement levels.”~~

1 ~~(6) In analyzing the cost-containment provisions of the federal~~
2 ~~act, Representative Boehner stated, “supermarket chains receive~~
3 ~~significant price discounts and concessions from manufacturers...~~
4 ~~. Independently owned stores, including independently owned~~
5 ~~chains and most WIC-Only stores, generally do not have the~~
6 ~~negotiating power to bargain for these benefits. As a result,~~
7 ~~independently owned stores may spend as much to purchase a~~
8 ~~product at wholesale as the retail price at a big chain. Because of~~
9 ~~this, vendor peers should allow for somewhat higher prices at~~
10 ~~small stores, relative to the larger supermarkets.”~~

11 ~~(b) It is the intent of the Legislature to enact legislation that~~
12 ~~complies with the cost-containment provisions of the “Child~~
13 ~~Nutrition and WIC Reauthorization Act of 2004.”~~

14 ~~SEC. 2. Section 123285 of the Health and Safety Code is~~
15 ~~amended to read:~~

16 ~~123285. As used in this article, the following definitions shall~~
17 ~~apply:~~

18 ~~(a) “Health professional” means a physician and surgeon,~~
19 ~~registered nurse, nutritionist, dietitian, or state or local medically~~
20 ~~trained health official, who is competent to professionally~~
21 ~~evaluate nutritional need and to authorize supplemental foods, as~~
22 ~~determined by the state department.~~

23 ~~(b) “Low income” means an income of not more than 185~~
24 ~~percent of the poverty level as determined by the federal poverty~~
25 ~~income guidelines promulgated by the United States Department~~
26 ~~of Health and Human Services.~~

27 ~~(c) “Recipient” means low-income pregnant women,~~
28 ~~low-income postpartum and lactating women, and low-income~~
29 ~~infants and children under five years of age, who are determined~~
30 ~~to be at nutritional risk by a health professional, based on criteria~~
31 ~~established by the state department.~~

32 ~~(d) “Nutrition coupon” means a check that is limited as to~~
33 ~~value, food type, and food quantity and that has a limited period~~
34 ~~of validity.~~

35 ~~(e) “WIC-only vendor” means any food vendor for which~~
36 ~~more than 50 percent of the annual revenue of the vendor from~~
37 ~~the sale of food items consists of revenues from the sale of~~
38 ~~supplemental foods that are obtained with food instruments.~~

39 ~~(f) “Large supermarket” means any store to which any of the~~
40 ~~following apply:~~

1 ~~(1) It is owned by a corporation having a total annual sales in~~
2 ~~excess of two billion dollars (\$2,000,000,000). Total annual sales~~
3 ~~shall not be limited to the sale of WIC items.~~

4 ~~(2) It has more than 10,000 square feet of selling space.~~

5 ~~(3) It has more than 10,000 different stock-keeping units~~
6 ~~(SKUs).~~

7 ~~SEC. 3. Section 123311 is added to the Health and Safety~~
8 ~~Code, to read:~~

9 ~~123311. (a) The department shall establish competitive price~~
10 ~~criteria and allowable reimbursement levels for WIC-only~~
11 ~~vendors. WIC-only vendors shall be paid the average payment~~
12 ~~per voucher paid to comparable vendors.~~

13 ~~(b) For purposes of this section, “comparable vendors” shall~~
14 ~~not include WIC-only vendors or large supermarkets, as defined~~
15 ~~in Section 123285.~~