

SENATE BILL REPORT

SB 5873

As Reported By Senate Committee On:
Financial Institution, Insurance & Housing, February 5, 1998

Title: An act relating to liability under the model toxics control act.

Brief Description: Determining liability under the model toxics control act.

Sponsors: Senators Benton and Winsley.

Brief History:

Committee Activity: Financial Institutions, Insurance & Housing: 2/4/98, 2/5/98 [DPS].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, INSURANCE & HOUSING

Majority Report: That Substitute Senate Bill No. 5873 be substituted therefor, and the substitute bill do pass.

Signed by Senators Winsley, Chair; Benton, Vice Chair; Finkbeiner, Hale, Heavey, Kline and Prentice.

Staff: Dave Cheal (786-7576)

Background: The Model Toxics Control Act of 1975 creates a system for determining responsibility for toxic waste cleanup. Owners of sites that have been identified as containing toxic materials are potentially liable for the costs associated with cleanup. The term owners— is extensively defined. The definition includes any person with an ownership interest in the facility (site) or anyone who exercises any control over the facility, or anyone who exercised control over an abandoned facility before its abandonment.

A person exercising control over property on behalf of another under a statute or court order is often referred to as a fiduciary. Examples are executors of estates, court-appointed masters, and trustees in bankruptcy.

Summary of Substitute Bill: The definition of who is not an owner is amended to include a fiduciary in his or her personal capacity. To qualify for the exemption the fiduciary must meet a list of reporting and compliance requirements which are also applicable to lenders. The exemption does not preclude a claim against the assets of the estate, or against a non-employee agent or independent contractor retained by a fiduciary.

A detailed definition of fiduciary— is provided.

Substitute Bill Compared to Original Bill: The requirements for qualifying for the fiduciary exemption are spelled out in greater detail, and are modeled after the lender exemption.

A detailed definition of fiduciary— is added.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Fiduciaries should not be subject to personal liability for merely acting as a trustee or similar representative capacity. However, setting up trusts and similar devices should not serve as a device for escaping liability under the act. This bill strikes an appropriate balance and provides workable safeguards.

Testimony Against: None.

Testified: PRO: Peter Kmet, Dept. of Ecology; Denny Eliason, Ivan Landreth, SeaFirst; Patti Thompson, WA Bankers Association.