

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

A Bill

Act 449 of 2001
SENATE BILL 327

5 By: Senator Wooldridge
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE 8-7-401 THROUGH 420, THE
10 EMERGENCY RESPONSE FUND ACT; TO AMEND ARKANSAS CODE 8-
11 7-501 THROUGH 523, THE REMEDIAL ACTION TRUST FUND ACT;
12 TO EXEMPT PERSONS WHO ARRANGED FOR RECYCLING OF
13 RECYCLABLE MATERIAL FROM LIABILITY UNDER THOSE ACTS;
14 AND FOR OTHER PURPOSES.
15

Subtitle

16 TO EXEMPT PERSONS WHO ARRANGED FOR
17 RECYCLING OF RECYCLABLE MATERIAL FROM
18 LIABILITY UNDER THE EMERGENCY RESPONSE
19 FUND ACT AND THE REMEDIAL ACTION TRUST
20 FUND ACT.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code Title 8, Chapter 7, Subchapter 4, the
27 Emergency Response Fund Act, is amended by adding the following additional
28 section:

29 8-7-421. Recycling Transactions.

30 (a) The purposes of this section are:

31 (1) To promote the reuse and recycling of scrap material in
32 Arkansas while protecting human health and the environment;

33 (2) To promote the goals of the Arkansas Pollution Prevention Act
34 and related Arkansas legislation intended to encourage recycling;

35 (3) To create greater equity in the statutory treatment of
36 recycled versus virgin materials;

1 (4) To remove the disincentives and impediments to recycling in
2 Arkansas created as an unintended consequence of certain liability provisions
3 contained in this statute; and

4 (5) To incorporate in this Arkansas statute amendments to the
5 federal Comprehensive Environmental Response Compensation and Liability Act
6 adopted by the United States Congress in 1999 in P.L. 106-113, thus ensuring
7 that Arkansas law does not contain more stringent provisions than federal law.

8 (b)(1) For purposes of subsections (c), (d), (e) and (f) of this
9 section, a person who arranged for recycling of recyclable material shall not
10 be a "responsible party" under subdivisions (C) or (D) of §8-7-403(b)(1) with
11 respect to the recyclable materials.

12 (2) Nothing in this section shall be deemed to affect the
13 liability of a person under § 8-7-403(b)(1)(C) or (D) with respect to
14 materials that are not recyclable materials as defined in subsection (c) of
15 this section.

16 (c)(1) As used in this section, "recyclable material" means scrap
17 paper, scrap plastic, scrap glass, scrap textiles, scrap rubber other than
18 whole tires, scrap metal, or spent lead-acid, spent nickel-cadmium, and other
19 spent batteries, as well as minor amounts of material incident to or adhering
20 to the scrap material as a result of its normal and customary use prior to
21 becoming scrap.

22 (2) However, "recyclable material" does not include:

23 (A) Shipping containers of a capacity from thirty (30)
24 liters to three thousand (3,000) liters, whether intact or not, having any
25 hazardous substance, but not metal bits and pieces or hazardous substances
26 that form an integral part of the container, contained on or adhering thereto;
27 or

28 (B) Any item of material that contained polychlorinated
29 biphenyls at a concentration in excess of fifty (50) parts per million or any
30 new standard promulgated pursuant to applicable federal laws.

31 (d) Transactions involving scrap paper, scrap plastic, scrap glass,
32 scrap textiles, or scrap rubber other than whole tires shall be deemed to be
33 arranging for recycling of recyclable materials if the person who arranged for
34 the transaction by selling recyclable material or otherwise arranging for the
35 recycling of recyclable material can demonstrate by a preponderance of the
36 evidence that all of the following criteria were met at the time of the

1 transaction:

2 (1) The recyclable material met a commercial specification grade;

3 (2) A market existed for the recyclable material;

4 (3) A substantial portion of the recyclable material was made
5 available for use as feedstock for the manufacture of a saleable new product;

6 (4) The recyclable material could have been a replacement or
7 substitute for a virgin raw material, or the product to be made from the
8 recyclable material could have been a replacement or substitute for a product
9 made, in whole or in part, from virgin raw material;

10 (5) For transactions occurring ninety (90) days or more after the
11 effective date of this section, the person exercised reasonable care to
12 determine that the facility where the recyclable material was handled,
13 processed, reclaimed, or otherwise managed by another person, a "consuming
14 facility", was in compliance with substantive, not procedural or
15 administrative, provisions of any federal, state or local environmental law or
16 regulation or compliance order or decree issued pursuant thereto, applicable
17 to the handling, processing, reclamation, storage, or other management
18 activities associated with recyclable material; and

19 (6) For purposes of this subsection, reasonable care shall be
20 determined using criteria that include:

21 (A) The price paid in the recycling transaction;

22 (B) The ability of the person to detect the nature of the
23 consuming facility's operations concerning its handling, processing,
24 reclamation, or other management activities associated with recyclable
25 material; and

26 (C)(i) The result of inquiries made to the appropriate
27 federal, state, or local environmental agency regarding the consuming
28 facility's past and current compliance with substantive, not procedural or
29 administrative, provisions of any federal, state, or local environmental law
30 or regulation, or compliance order or decree issued pursuant thereto,
31 applicable to the handling, processing, reclamation, storage, or other
32 management activities associated with the recyclable material.

33 (ii) For the purposes of this subsection, a
34 requirement to obtain a permit applicable to the handling, processing,
35 reclamation, or other management activity associated with the recyclable
36 materials shall be deemed to be a substantive provision.

1 (e)(1) Transactions involving scrap metal shall be deemed to be
2 arranging for recycling if the person who arranged for the transaction, by
3 selling recyclable material or otherwise arranging for the recycling of
4 recyclable material, can demonstrate by a preponderance of the evidence that
5 at the time of the transaction:

6 (A) The person met the criteria set forth in subsection (d)
7 with respect to the scrap metal;

8 (B) The person was in compliance with any applicable
9 regulations or standards regarding the storage, transport, management, or
10 other activities associated with the recycling of scrap metal that the
11 Arkansas Pollution Control and Ecology Commission promulgates subsequent to
12 the enactment of this section and with regard to transactions occurring after
13 the effective date of such regulations or standards; and

14 (C) The person did not melt the scrap metal prior to the
15 transaction.

16 (2) For purposes of subdivision (e)(1)(C) of this section,
17 melting of scrap metal does not include the thermal separation of two (2) or
18 more materials due to differences in their melting points, referred to as
19 "sweating".

20 (3) For purposes of this subsection, the term "scrap metal" means
21 bits and pieces of metal parts, e.g., bars, turnings, rods, sheets, wire, or
22 metal pieces that may be combined together with bolts or soldering, e.g.,
23 radiators, scrap automobiles, railroad box cars, which when worn or
24 superfluous can be recycled, except for scrap metals that the federal
25 Environmental Protection Agency or Arkansas Pollution Control and Ecology
26 Commission excludes from this definition by regulation.

27 (f) Transactions involving spent lead-acid batteries, spent
28 nickel-cadmium batteries, or other spent batteries shall be deemed to be
29 arranging for recycling if the person who arranged for the transaction, by
30 selling recyclable material or otherwise arranging for the recycling of
31 recyclable material, can demonstrate by a preponderance of the evidence that
32 at the time of the transaction:

33 (1)(A) The person met the criteria set forth in subsection (d)
34 with respect to the spent lead-acid batteries, spent nickel-cadmium batteries,
35 or other spent batteries, but the person did not recover the valuable
36 components of those batteries; and

1 (B) With respect to transactions involving lead-acid
2 batteries, the person was in compliance with applicable federal and Arkansas
3 environmental regulations or standards, and any amendments thereto, regarding
4 the storage, transport, management, or other activities associated with the
5 recycling of spent lead-acid batteries;

6 (2) With respect to transactions involving nickel-cadmium
7 batteries, federal and Arkansas environmental regulations or standards are in
8 effect regarding the storage, transport, management, or other activities
9 associated with the recycling of spent nickel-cadmium batteries, and the
10 person was in compliance with applicable regulations or standards or any
11 amendments thereto; or

12 (3) With respect to transactions involving other spent batteries,
13 federal and Arkansas environmental regulations or standards are in effect
14 regarding the storage, transport, management, or other activities associated
15 with the recycling of such batteries, and the person was in compliance with
16 applicable regulations or standards.

17 (g)(1) The exemptions set forth in subsections (d), (e), and (f) shall
18 not apply if:

19 (A) the person had an objectively reasonable basis to
20 believe at the time of the recycling transaction:

21 (i) That the recyclable material would not be
22 recycled;

23 (ii) That the recyclable material would be burned as
24 fuel or for energy recovery or incineration; or

25 (iii) For transactions occurring more than ninety (90)
26 days after the effective date of this act, that the consuming facility was not
27 in compliance with a substantive, not procedural or administrative, provision
28 of any federal, Arkansas, or local environmental law or regulation, or
29 compliance order or decree issued pursuant thereto, applicable to the
30 handling, processing, reclamation, or other management activities associated
31 with the recyclable material;

32 (B) The person had reason to believe that hazardous
33 substances had been added to the recyclable material for purposes other than
34 processing for recycling;

35 (C) The person failed to exercise reasonable care with
36 respect to the management and handling of the recyclable material, including

1 adhering to customary industry practices current at the time of the recycling
 2 transaction designed to minimize, through source control, contamination of the
 3 recyclable material by hazardous substances; or

4 (2) For purposes of this subsection, an objectively reasonable
 5 basis for belief shall be determined using criteria that include:

6 (A) The size of the person's business;

7 (B) Customary industry practices, including customary
 8 industry practices current at the time of the recycling transaction designed
 9 to minimize, through source control, contamination of the recyclable material
 10 by hazardous substances;

11 (C) The price paid in the recycling transaction; and

12 (D) The ability of the person to detect the nature of the
 13 consuming facility's operations concerning its handling, processing,
 14 reclamation, or other management activities associated with the recyclable
 15 material.

16 (3) For purposes of this subsection, a requirement to obtain a
 17 permit applicable to the handling, processing, reclamation, or other
 18 management activities associated with recyclable material shall be deemed to
 19 be a substantive provision.

20 (h) Nothing in this section shall be deemed to affect the liability of
 21 a person under subdivision (A) or (B) of § 8-7-403(b)(1).

22 (i) The Arkansas Pollution Control and Ecology Commission is authorized
 23 to promulgate additional regulations concerning this section.

24 (j) The exemptions provided in this section shall not affect any
 25 concluded judicial or administrative action or any pending judicial action
 26 initiated by the State of Arkansas before enactment of this section.

27 (k)(1) Any person who commences an action in contribution against a
 28 person who is not liable by operation of this section shall be liable to that
 29 person for all reasonable costs of defending that action, including all
 30 reasonable attorney's and expert witness fees.

31 (2) For the purpose of this subsection, the term "person" shall
 32 not include an agency, board, commission or department of the State of
 33 Arkansas.

34 (l) Nothing in this section shall affect:

35 (1) Liability under any other federal, Arkansas, or local statute
 36 or regulation promulgated pursuant to any such statute, including any

1 requirements promulgated by the Arkansas Pollution Control & Ecology
 2 Commission under the Arkansas Hazardous Waste Management Act; or

3 (2) The ability of the Arkansas Pollution Control and Ecology
 4 Commission to promulgate regulations under any other statute, including the
 5 Arkansas Hazardous Waste Management Act.

6 (m) Nothing in the section shall be construed to:

7 (1) Affect any defenses or liabilities of any person to whom
 8 subdivision (b)(1) does not apply; or

9 (2) Create any presumption of liability against any person to
 10 whom subdivision (b)(1) does not apply.

11
 12 SECTION 2. Arkansas Code Title 8, Chapter 7, Subchapter 4, the Remedial
 13 Action Trust Fund Act, is amended by adding the following additional section:

14 8-7-524. Recycling Transactions.

15 (a) The purposes of this section are:

16 (1) To promote the reuse and recycling of scrap material in
 17 Arkansas while protecting human health and the environment;

18 (2) To promote the goals of the Arkansas Pollution Prevention Act
 19 and related Arkansas legislation intended to encourage recycling;

20 (3) To create greater equity in the statutory treatment of
 21 recycled versus virgin materials;

22 (4) To remove the disincentives and impediments to recycling in
 23 Arkansas created as an unintended consequence of certain liability provisions
 24 contained in this statute; and

25 (5) To incorporate in this Arkansas statute amendments to the
 26 federal Comprehensive Environmental Response Compensation and Liability Act
 27 adopted by the United States Congress in 1999 in P.L. 106-113, thus ensuring
 28 that Arkansas law does not contain more stringent provisions than federal law.

29 (b)(1) As provided in subsections (c), (d), (e), and (f), a person who
 30 arranged for recycling of recyclable material shall not be liable under
 31 subdivisions (3) or (4) of §8-7-512(a) with respect to such materials.

32 (2) Nothing in this section shall be deemed to effect the
 33 liability of a person under § 8-7-512(a)(3) or (4) with respect to materials
 34 that are not recyclable materials as defined in subsection (c) of this
 35 section.

36 (c)(1) For purposes of this section, "recyclable material" means scrap

1 paper, scrap plastic, scrap glass, scrap textiles, scrap rubber other than
2 whole tires, scrap metal, or spent lead-acid, spent nickel-cadmium, and other
3 spent batteries, as well as minor amounts of material incident to or adhering
4 to the scrap material as a result of its normal and customary use prior to
5 becoming scrap.

6 (2) However, recyclable material does not include:

7 (A) Shipping containers of a capacity from thirty (30)
8 liters to three thousand (3,000) liters, whether intact or not, having any
9 hazardous substance, but not metal bits and pieces or hazardous substance that
10 form an integral part of the container, contained on or adhering thereto; or

11 (B) Any item of material that contained polychlorinated
12 biphenyls at a concentration in excess of fifty (50) parts per million or any
13 new standard promulgated pursuant to applicable federal laws.

14 (d) Transactions involving scrap paper, scrap plastic, scrap glass,
15 scrap textiles, or scrap rubber other than whole tires shall be deemed to be
16 arranging for recycling of recyclable materials if the person who arranged for
17 the transaction, by selling recyclable material or otherwise arranging for the
18 recycling of recyclable material, can demonstrate by a preponderance of the
19 evidence that all of the following criteria were met at the time of the
20 transaction:

21 (1) The recyclable material met a commercial specification grade;

22 (2) A market existed for the recyclable material;

23 (3) A substantial portion of the recyclable material was made
24 available for use as feedstock for the manufacture of a saleable new product;

25 (4) The recyclable material could have been a replacement or
26 substitute for a virgin raw material, or the product to be made from the
27 recyclable material could have been a replacement or substitute for a product
28 made, in whole or in part, from virgin raw material;

29 (5) For transactions occurring ninety (90) days or more after the
30 date of enactment of this section, the person exercised reasonable care to
31 determine that the facility where the recyclable material was handled,
32 processed, reclaimed, or otherwise managed by another person, a "consuming
33 facility", was in compliance with substantive, not procedural or
34 administrative, provisions of any federal, state or local environmental law or
35 regulation or compliance order or decree issued pursuant thereto, applicable
36 to the handling, processing, reclamation, storage, or other management

1 activities associated with recyclable material; and

2 (6) For purposes of this subsection, "reasonable care" shall be
 3 determined using criteria that include:

4 (A) The price paid in the recycling transaction;

5 (B) The ability of the person to detect the nature of the
 6 consuming facility's operations concerning its handling, processing,
 7 reclamation, or other management activities associated with recyclable
 8 material; and

9 (C)(i) The result of inquiries made to the appropriate
 10 federal, state, or local environmental agency regarding the consuming
 11 facility's past and current compliance with substantive, not procedural or
 12 administrative, provisions of any federal, state, or local environmental law
 13 or regulation, or compliance order or decree issued pursuant thereto,
 14 applicable to the handling, processing, reclamation, storage, or other
 15 management activities associated with the recyclable material.

16 (ii) For the purposes of this subdivision (d)(6)(C),
 17 a requirement to obtain a permit applicable to the handling, processing,
 18 reclamation, or other management activity associated with the recyclable
 19 materials shall be deemed to be a substantive provision.

20 (e)(1) Transactions involving scrap metal shall be deemed to be
 21 arranging for recycling if the person who arranged for the transaction by
 22 selling recyclable material or otherwise arranging for the recycling of
 23 recyclable material can demonstrate by a preponderance of the evidence that at
 24 the time of the transaction:

25 (A) The person met the criteria set forth in subsection (d)
 26 with respect to the scrap metal;

27 (B) The person was in compliance with any applicable
 28 regulations or standards regarding the storage, transport, management, or
 29 other activities associated with the recycling of scrap metal that the
 30 Arkansas Pollution Control and Ecology Commission promulgates after the
 31 enactment of this section and with regard to transactions occurring after the
 32 effective date of such regulations or standards; and

33 (C) The person did not melt the scrap metal prior to the
 34 transaction.

35 (2) For purposes of subdivision (e)(1)(C), melting of scrap metal
 36 does not include the thermal separation of two (2) or more materials due to

1 differences in their melting points, "sweating".

2 (3) For purposes of this subsection, the term "scrap metal" means
3 bits and pieces of metal parts, e.g., bars, turnings, rods, sheets, wire, or
4 metal pieces that may be combined together with bolts or soldering, e.g.,
5 radiators, scrap automobiles, railroad box cars, which when worn or
6 superfluous can be recycled, except for scrap metals that the federal
7 Environmental Protection Agency or Arkansas Pollution Control and Ecology
8 Commission excludes from this definition by regulation.

9 (f) Transactions involving spent lead-acid batteries, spent
10 nickel-cadmium batteries, or other spent batteries shall be deemed to be
11 arranging for recycling if the person who arranged for the transaction by
12 selling recyclable material or otherwise arranging for the recycling of
13 recyclable material can demonstrate by a preponderance of the evidence that at
14 the time of the transaction:

15 (1)(A) The person met the criteria set forth in subsection (d)
16 with respect to the spent lead-acid batteries, spent nickel-cadmium batteries,
17 or other spent batteries, but the person did not recover the valuable
18 components of such batteries; and

19 (B) With respect to transactions involving lead-acid
20 batteries, the person was in compliance with applicable federal and Arkansas
21 environmental regulations or standards, and any amendments thereto, regarding
22 the storage, transport, management, or other activities associated with the
23 recycling of spent lead-acid batteries;

24 (2) With respect to transactions involving nickel-cadmium
25 batteries, federal and Arkansas environmental regulations or standards are in
26 effect regarding the storage, transport, management, or other activities
27 associated with the recycling of spent nickel-cadmium batteries, and the
28 person was in compliance with applicable regulations or standards or any
29 amendments thereto; or

30 (3) With respect to transactions involving other spent batteries,
31 federal and Arkansas environmental regulations or standards are in effect
32 regarding the storage, transport, management, or other activities associated
33 with the recycling of such batteries, and the person was in compliance with
34 applicable regulations or standards or any amendments thereto.

35 (g)(1) The exemptions set forth in subsections (d), (e) and (f) shall
36 not apply if:

1 (A) The person had an objectively reasonable basis to
2 believe at the time of the recycling transaction:

3 (i) That the recyclable material would not be
4 recycled;

5 (ii) That the recyclable material would be burned as
6 fuel, or for energy recovery or incineration; or

7 (iii) For transactions occurring before ninety (90)
8 days after the date of the enactment of this section, that the consuming
9 facility was not in compliance with a substantive, not procedural or
10 administrative, provision of any federal, state, or local environmental law or
11 regulation, or compliance order or decree issued pursuant thereto, applicable
12 to the handling, processing, reclamation, or other management activities
13 associated with the recyclable material;

14 (B) The person had reason to believe that hazardous
15 substances had been added to the recyclable material for purposes other than
16 processing for recycling;

17 (C) The person failed to exercise reasonable care with
18 respect to the management and handling of the recyclable material, including
19 adhering to customary industry practices current at the time of the recycling
20 transaction designed to minimize, through source control, contamination of the
21 recyclable material by hazardous substances; or

22 (2) For purposes of this subsection, an objectively reasonable
23 basis for belief shall be determined using criteria that include the size of
24 the person's business, customary industry practices, including customary
25 industry practices current at the time of the recycling transaction designed
26 to minimize, through source control, contamination of the recyclable material
27 by hazardous substances, the price paid in the recycling transaction, and the
28 ability of the person to detect the nature of the consuming facility's
29 operations concerning its handling, processing, reclamation, or other
30 management activities associated with the recyclable material.

31 (3) For purposes of this subsection, a requirement to obtain a
32 permit applicable to the handling, processing, reclamation, or other
33 management activities associated with recyclable material shall be deemed to
34 be a substantive provision.

35 (h) Nothing in this section shall be deemed to affect the liability of
36 a person under subdivision (1) or (2) of §8-7-512(a).

1 (i) The Arkansas Pollution Control and Ecology Commission is authorized
2 to promulgate additional rules and regulations concerning this section.

3 (j) The exemptions provided in this section shall not affect any
4 concluded judicial or administrative action or any pending judicial action
5 initiated by the State of Arkansas before enactment of this section.

6 (k)(1) Any person who commences an action in contribution against a
7 person who is not liable by operation of this section shall be liable to that
8 person for all reasonable costs of defending that action, including all
9 reasonable attorney's and expert witness fees.

10 (2) For the purposes of this subsection, the term "person" shall
11 not include an agency, board, commission or department of the State of
12 Arkansas.

13 (l) Nothing in this section shall affect:

14 (1) Liability under any other federal, Arkansas, or local statute
15 or regulation promulgated pursuant to any such statute, including any
16 requirements promulgated by the Arkansas Pollution Control and Ecology
17 Commission under the Arkansas Hazardous Waste Management Act; or

18 (2) The ability of the Arkansas Pollution Control and Ecology
19 Commission to promulgate regulations under any other statute, including the
20 Arkansas Hazardous Waste Management Act.

21 (m) Nothing in the section shall be construed to:

22 (1) Affect any defenses or liabilities of any person to whom
23 subsection (b)(1) does not apply; or

24 (2) Create any presumption of liability against any person to
25 whom subsection (b)(1) does not apply.

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28 **APPROVED: 2/27/2001**
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