

HOUSE BILL NO. HB0144

Wyoming Emergency Response Act.

Sponsored by: Joint Transportation and Highways Interim
Committee

A BILL

for

1 AN ACT relating to public health and safety; creating the
2 Wyoming Emergency Response Act; creating the state
3 emergency response commission; providing procedures for the
4 response to the release of hazardous materials or a weapons
5 of mass destruction incident as specified; authorizing
6 local emergency planning committees and regional response
7 teams; providing for liability for a released hazardous
8 material; providing for recovery of expenses incurred in
9 responding to hazardous material and weapons of mass
10 destruction incidents; providing for mediation; providing
11 exceptions; granting rulemaking authority; and providing
12 for an effective date.

13

14 *Be It Enacted by the Legislature of the State of Wyoming:*

15

1 **Section 1.** W.S. 35-9-151 through 35-9-159 are created
2 to read:

3

4

Division 5

5

Wyoming Emergency Response Act

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35-9-151. Short title.

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9 This act shall be known and may be cited as the "Wyoming
10 Emergency Response Act".

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35-9-152. Definitions.

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14

(a) As used in this act:

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(i) "Emergency responders" means public, state or federal fire services, law enforcement, emergency medical services, public health, public works, emergency management and other public response services or agencies that would be involved in direct actions to contain or control a hazardous material release or weapons of mass destruction incident. The term "emergency responders" does not include private on-site facilities with immediate emergency response capabilities unless formally requested

1 to assist off the private facility site by the state or a
2 political subdivision of the state;

3

4 (ii) "Emergency response" means a response to
5 any occurrence including a weapon of mass destruction
6 incident, which has resulted, or may result, in a release
7 of a hazardous material;

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9 (iii) "Hazardous material" means any substance,
10 material, waste or mixture designated as hazardous
11 material, waste or substance as defined in 49 C.F.R. part
12 171.8, as amended as of April 1, 2004;

13

14 (iv) "Incident" means the release, or imminent
15 threat of release, of a hazardous material, or a situation
16 involving a potential weapon of mass destruction that
17 requires the emergency action of responders to limit or
18 prevent damage to life or property;

19

20 (v) "Incident commander" means the person in
21 charge of all responders at the site of an emergency
22 response;

23

1 (vi) "Local emergency response authority" means
2 the single point of contact designated for a political
3 subdivision for coordinating responses to incidents;

4
5 (vii) "Political subdivision" means any county,
6 city, town or fire protection district of the state;

7
8 (viii) "Regional emergency response team" means
9 any group of local government emergency responders brought
10 together and supported by the state and confirmed by the
11 homeland security director to assist an affected
12 jurisdiction within the different regions of the state with
13 the intent to protect life and property against the dangers
14 of incidents and emergencies involving hazardous materials
15 or weapons of mass destruction;

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17 (ix) "Transporter" means an individual, firm,
18 copartnership, corporation, company, association or joint
19 stock association, including any trustee, receiver,
20 assignee, or similar representative, or a government or
21 Indian tribe, or an agency or instrumentality of any
22 government or Indian tribe, that transports a hazardous
23 material to further a commercial enterprise or offers a

1 hazardous material for transportation in commerce.

2 "Transporter" does not include the following:

3

4 (A) The United States Postal Service;

5

6 (B) Any government or Indian tribe, or an
7 agency or instrumentality of any government or Indian
8 tribe, that transports hazardous material for a
9 governmental purpose;

10

11 (x) "Homeland security director" means as
12 defined in W.S. 19-13-102(a)(v);

13

14 (xi) "Unified command" means a system of command
15 that allows all parties with jurisdictional or functional
16 responsibility for the incident to work together to develop
17 a common set of incident objectives and strategies, share
18 information, maximize the utilization of available
19 resources and enhance the efficiency of the individual
20 response organizations;

21

22 (xii) "Weapons of mass destruction" means as
23 defined in 18 U.S.C. 2332(a) as of April 1, 2004, or as

1 subsequently defined by rules and regulations of the
2 homeland security director;

3

4 (xiii) "This act" means W.S. 35-9-151 through
5 35-9-159.

6

7 **35-9-153. State emergency response commission;**
8 **creation; duties.**

9

10 (a) There is created a state emergency response
11 commission that shall consist of members appointed by the
12 governor to advise the homeland security director with
13 respect to activities under this act. The commission shall
14 consist of not less than four (4) members representing the
15 mining, trucking, manufacturing and railroad industries,
16 one (1) member each from the legislature, local government,
17 local law enforcement, fire services, the Joint Tribal
18 Council, emergency management services, the media, the
19 medical field and the general public, and one (1)
20 representative from each of the following state agencies:

21

22 (i) The department of environmental quality;

23

24 (ii) The department of health;

1

2 (iii) The department of transportation;

3

4 (iv) The department of agriculture;

5

6 (v) The department of fire prevention and
7 electrical safety;

8

9 (vi) The University of Wyoming environmental
10 health and safety office.

11

12 (b) The governor may remove any member as provided in
13 W.S. 9-1-202.

14

15 (c) The commission shall appoint a chairman and other
16 officers deemed necessary from among its members. The
17 commission may meet as often as deemed necessary by a
18 majority of the commission or at the request of the
19 homeland security director. Commission members who are not
20 state employees may be reimbursed for per diem and mileage
21 for attending commission meetings in the same manner and
22 amount as state employees.

23

1 (d) The governor may give consideration to the
2 geographical location of the commission members, to the
3 extent possible, in order to have broad representation of
4 the geographical areas of the state.

5

6 (e) The commission shall review collection and
7 disbursement of funds and advise the homeland security
8 director on activities and responsibilities under this act.

9

10 (f) The commission shall, by rule, establish
11 emergency planning districts in accordance with the
12 requirements of 42 U.S.C. 11001 et seq. and in compliance
13 with the Wyoming Administrative Procedure Act, to consist
14 of twenty-three (23) districts corresponding to the
15 jurisdictions of the twenty-three (23) counties of the
16 state. The commission shall appoint members of the local
17 emergency planning committees for each emergency planning
18 district to include representatives required by 42 U.S.C.
19 11001, et seq. The commission shall annually review
20 memberships and activities of the local emergency planning
21 committees and report to the governor annually on those
22 activities. The commission shall work with each board of
23 county commissioners and city council to promote support by

1 the board for the local emergency planning committee in the
2 county.

3

4 (g) The commission shall perform all duties and acts
5 prescribed by 42 U.S.C. 11001 et seq., and all other
6 applicable law, with the assistance of the Wyoming office
7 of homeland security and other state agencies determined to
8 be necessary by the commission.

9

10 **35-9-154. Emergency response training, planning and**
11 **reporting.**

12

13 (a) After consultation with the commission and the
14 state fire marshal, the homeland security director shall:

15

16 (i) Coordinate, develop, implement and make
17 available a comprehensive voluntary training program
18 designed to assist emergency responders in hazardous
19 material or weapons of mass destruction incidents;

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21 (ii) Provide for ongoing training programs for
22 political subdivisions, state agency employees and private
23 industry employees involved in responding to hazardous
24 materials or weapons of mass destruction incidents.

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35-9-155. Regional response teams; rulemaking.

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(iii) Assist with emergency response planning by appropriate agencies of government at the local, state and national levels.

(a) The state, political subdivisions of the state and other units of local government, may contract or coordinate to make available for use in any county, city or fire protection district any part of a regional emergency response team of appropriately trained personnel and specialized equipment necessary to respond to an incident or emergency.

(b) Members of the regional emergency response teams shall be indemnified and defended from liability by the state self-insurance program:

(i) While engaged in response to incidents outside their normal jurisdiction and pursuant to an appropriate request for assistance; or

1 (ii) While traveling to or from an operation
2 authorized by this act.

3

4 (c) The state may lend equipment and personnel and
5 make grants from available state or federal funds for the
6 purchase of equipment to any local government participating
7 in the regional emergency response program.

8

9 (d) The homeland security director, in consultation
10 with the state fire marshal and subject to approval by the
11 state emergency response commission, shall:

12

13 (i) Promulgate rules and regulations
14 establishing:

15

16 (A) Standards for regional response teams;

17

18 (B) Hazardous material emergency response
19 training confirmation;

20

21 (C) Local and regional hazardous materials
22 or weapons of mass destruction incident response reporting.

23

1 (ii) Establish criteria for providing aid to
2 regional emergency response teams.

3

4 **35-9-156. Local response authority.**

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6 (a) Every political subdivision of the state shall
7 designate a local emergency response authority for
8 responding to and reporting of hazardous material or
9 weapons of mass destruction incidents that occur within its
10 jurisdiction. The designation of a local emergency response
11 authority and copies of any accompanying agreements and
12 other pertinent documentation created pursuant to this
13 section shall be filed with the homeland security director
14 within seven (7) days of the agreement being reduced to
15 writing and signed by all appropriate persons.

16

17 (b) Every local emergency response authority shall
18 coordinate the response to an incident occurring within its
19 jurisdiction in a fashion consistent with standard incident
20 command protocols. The local emergency response authority
21 shall also coordinate the response to an incident which
22 initially occurs within its jurisdiction but which spreads
23 to another jurisdiction. If an incident occurs on a
24 boundary between two (2) jurisdictions or in an area not

1 readily ascertainable, the first local emergency response
2 authority arriving at the scene shall coordinate the
3 initial emergency response and shall be responsible for
4 seeking reimbursement for the incident on behalf of all
5 responding authorities entitled to reimbursement under W.S.
6 35-9-157(a).

7

8 (c) Any unusual incident involving hazardous
9 materials or weapons of mass destruction shall be
10 investigated to determine if a criminal act has occurred
11 until it is determined otherwise. To ensure preservation
12 of evidence while mitigating the threat to life and
13 property under this subsection, a command structure with
14 primary command authority by the appropriate law
15 enforcement agency shall be implemented.

16

17 (d) The incident commander shall declare an incident
18 ended when he has determined the threat to public health
19 and safety has ended.

20

21 **35-9-157. Right to claim reimbursement.**

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23 (a) The state, political subdivision of the state or
24 other unit of local government is hereby given the right to

1 claim reimbursement for the costs resulting from action
2 taken to remove, contain or otherwise mitigate the effects
3 of a hazardous materials abandonment, a hazardous materials
4 spill or a weapons of mass destruction incident.

5

6 (b) Notwithstanding subsection (a) of this section,
7 no person shall be liable under this act if the incident
8 was caused by:

9

10 (i) An act of God; or

11

12 (ii) An act or omission of a person not defined
13 as a transporter under this act, provided that:

14

15 (A) The potentially liable person exercised
16 reasonable care with respect to the hazardous material
17 involved, taking into consideration the characteristics of
18 the hazardous material in light of all relevant facts and
19 circumstances; and

20

21 (B) The potentially liable person took
22 reasonable precautions against foreseeable acts or
23 omissions of any third person and the consequences that
24 could foreseeably result from those acts or omissions.

1

2 (c) Local emergency response authorities and regional
3 emergency response teams shall be entitled to recover their
4 reasonable and necessary costs incurred as a result of
5 their response to a hazardous material or weapons of mass
6 destruction incident. Costs subject to recovery under this
7 act include, but are not limited to, the following:

8

9 (i) Disposable materials and supplies acquired,
10 consumed and expended specifically for the purpose of the
11 response;

12

13 (ii) Remuneration of employees for the time and
14 efforts devoted to responding to a hazardous materials or
15 weapons of mass destruction incident outside the
16 responders' normal jurisdiction;

17

18 (iii) A reasonable fee, as established through
19 rules and regulations of the homeland security director,
20 for the use of equipment, including rolling stock, in
21 responding to a hazardous materials or weapons of mass
22 destruction incident outside the responders' normal
23 jurisdiction;

24

1 (iv) Rental or leasing of equipment used
2 specifically for the response;

3

4 (v) At value replacement costs for equipment
5 owned by the person claiming reimbursement that is
6 contaminated beyond reuse or repair, if the loss occurred
7 as a result of the response;

8

9 (vi) Decontamination of equipment contaminated
10 during the response;

11

12 (vii) Special technical services specifically
13 requested and required for the response;

14

15 (viii) Medical monitoring or treatment of
16 response personnel;

17

18 (ix) Laboratory expenses for analyzing samples
19 taken during the response; and

20

21 (x) If determined to involve criminal activity,
22 all costs and expenses of the investigation.

23

1 (d) Nothing contained in this section shall be
2 construed to change or impair any right of recovery or
3 subrogation arising under any other provision of law.

4

5 **35-9-158. Expense recovery and civil remedies.**

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7 (a) The decision to commence a civil action to
8 recover expenses shall be made by the state, political
9 subdivision of the state or other unit of local government,
10 including local emergency response authorities and regional
11 response teams, in consultation with the attorney general
12 or county or municipal attorney as appropriate.

13

14 (b) Prior to commencing a civil action for recovery
15 of expenses pursuant to this act, the governmental entity
16 shall afford the person alleged to owe those expenses a
17 reasonable opportunity to engage in nonbinding mediation.
18 Each party to mediation shall bear his own costs and
19 expenses, including a proportionate share of the fees of
20 the mediator.

21

22 (c) In the event that the attorney general or county
23 or municipal attorney prevails in a civil action for
24 reimbursement under this act, the court shall award costs

1 of collection including reasonable attorney's fees,
2 investigation expenses and litigation expenses.

3

4 (d) Any person who receives remuneration for the
5 emergency response expenses pursuant to any other federal
6 or state law shall be precluded from recovering
7 reimbursement for those expenses under this act. Nothing in
8 this act shall otherwise affect or modify in any way the
9 obligations or liability of any person under any other
10 provision of state or federal law, including common law,
11 for damages, injury or loss resulting from the release of
12 any hazardous material or for remedial action or the
13 expenses of remedial action for the release.

14

15 **35-9-159. Exceptions to reimbursements; exception to**
16 **act.**

17

18 (a) This act shall not apply to releases of a
19 hazardous material where there is an immediate on-site
20 private industry response capability to the emergency. The
21 exemption under this subsection shall apply only if the
22 private industry files evidence of its immediate response
23 capability to respond to emergency releases of hazardous
24 materials that may be present at the site of the private

1 industry or the responsible party and incident commander
 2 have determined that the local or regional response team is
 3 no longer required and should be released. The exemption
 4 shall not apply if emergency responders responded to a
 5 release of hazardous materials at the request of the on-
 6 site private industry where the emergency occurred.

7

8 (b) The state, political subdivisions of the state or
 9 other unit of local government shall not be entitled to
 10 reimbursement under this act from any responsible party for
 11 an incident involving less than the following quantities of
 12 hazardous materials:

13

14 **Hazard Class/Division Hazard Type Quantity subject to**
 15 **from 49 CFR reimbursement**
 16 **Article 100-185**

17

18 1.1, 1.2, 1.3 Explosive Materials Any quantity
 19 (Table 1 materials)

20 1.4, 1.5, 1.6 Explosive Materials 1001 pounds
 21 (Table 2 materials)

22 2.1 Flammable Gas 150 gallons
 23 (Table 2 material)

24 2.3 Poison Gas Any quantity
 25 (Table 1 material)

26 3 Flammable Liquid 150 gallons

1	(Table 2 material)		
2	3	Combustible Liquid	300 gallons
3	(Table 2 material)		
4	4.1	Flammable Solid or	11 pounds
5	4.2	Spontaneously Combustible	
6	(Table 2 materials)	Material	
7	4.3	Dangerous When Wet	3 pounds
8	(Table 1 material)		
9	5.1	Oxidizer	1001 pounds
10	(Table 2 material)	(Includes inorganic	
11		Peroxides)	
12	5.2	Organic Peroxide	66 pounds
13	(Table 1 material)		
14	6.1	Poison (Inhalation	32 pounds
15	(Table 1 material)	Hazard Zone A or B)	
16	6.1	Poison (Other than	1001 pounds
17	(Table 2 material)	Inhalation Hazard Zone	
18		A or B)	
19	6.2	Infectious Substance	1001 pounds
20	(Table 2 material)		
21	Class 7	Radio Active Material	Any quantity
22	(Table 1 material)	(Yellow Label III only)	
23	Class 8	Corrosive Material	1001 pounds
24	(Table 2 material)		
25	Class 9	Miscellaneous	1001 pounds
26	(Table 2 material)	Hazardous Material	
27			

1 (c) The initial response authority shall seek
2 reimbursement on behalf of all responders entitled to
3 reimbursement under this act from any responsible party for
4 an incident involving hazardous materials under this act.

5

6 **Section 2.** W.S. 1-41-102(a)(v)(A) is amended to read:

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8 **1-41-102. Definitions.**

9

10 (a) As used in this act:

11

12 (v) "Public employee" means any officer,
13 employee or servant of the state, provided the term:

14

15 (A) Includes elected or appointed
16 officials, peace officers, members of regional emergency
17 response teams authorized under W.S. 35-9-155 and persons
18 acting on behalf or in service of the state in any official
19 capacity, whether with or without compensation, including
20 volunteer physicians providing medical services under W.S.
21 9-2-103(a)(iii);

22

1 **Section 3.** This act is effective immediately upon
2 completion of all acts necessary for a bill to become law
3 as provided by Article 4, Section 8 of the Wyoming
4 Constitution.

5

6

(END)