

# AN ACT

To amend sections 3746.02 and 3746.05 and to enact section 3746.122 of the Revised Code to establish an affirmative defense to a release or threatened release of hazardous substances from a facility for certain bona fide prospective purchasers.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 3746.02 and 3746.05 be amended and section 3746.122 of the Revised Code be enacted to read as follows:

Sec. 3746.02. (A) Nothing in this chapter applies to any of the following:

(1) Property for which a voluntary action under this chapter is precluded by federal law or regulations adopted under federal law, including, without limitation, any of the following federal laws or regulations adopted thereunder:

(a) The "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended;

(b) The "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended;

(c) The "Toxic Substances Control Act," 90 Stat. 2003 (1976), 15 U.S.C.A. 2601, as amended;

(d) The "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 2779, 42 U.S.C.A. 9601, as amended;

(e) The "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended.

(2) Those portions of property where closure of a hazardous waste facility or solid waste facility is required under Chapter 3734. of the Revised Code or rules adopted under it;

(3) Except as provided in division (A)(3) of section 3737.88 of the Revised Code, properties that are subject to rules adopted by the fire marshal under Chapter 3737. of the Revised Code pertaining to corrective actions as defined in section 3737.87 of the Revised Code;

(4) Property that is subject to Chapter 1509. of the Revised Code;

(5) Any other property if the director of environmental protection has issued a letter notifying the owner or operator of the property that the director will issue an enforcement order under Chapter 3704., 3734., or 6111. of the Revised Code, a release or threatened release of a hazardous substance or petroleum from or at the property poses a substantial threat to public health or safety or the environment, and ~~the either of the following applies:~~

(a) The person subject to the letter does not present sufficient evidence to the director that the person has entered into the voluntary action program under this chapter and is proceeding expeditiously to address that threat.

(b) The person cannot demonstrate the person is a bona fide prospective purchaser under

section 3746.122 of the Revised Code. For

For the purposes of this division, the evidence constituting sufficient evidence of entry into the voluntary action program under this chapter shall be defined by the director by rules adopted under section 3746.04 of the Revised Code.

(B) The application of any provision of division (A) of this section to a portion of property does not preclude participation in the voluntary action program under this chapter in connection with other portions of the property where those provisions do not apply.

(C) As used in this section, "property" means any parcel of real property, or portion thereof, and any improvements thereto.

Sec. 3746.05. (A) A remedy or remedial activity conducted under this chapter may attain applicable standards otherwise established in this chapter and rules adopted under it through the use of institutional controls or activity and use limitations that restrict the use of a property or through the removal of, treatment of, transportation for treatment or disposal of, disposal of, or use of engineering controls that contain or control the release of hazardous substances or petroleum at or from a property. Any such institutional controls or activity and use limitations that restrict the use of a property shall ensure that the property is used only for purposes that comply with the applicable standards established in this chapter and rules adopted under it pertaining to the intended use of the property after the completion of the voluntary action, as the intended use is specified in the documents establishing the institutional controls or activity and use limitations. If

(B)(1) If a property is subject to institutional controls or activity and use limitations and is put to a use that does not comply with the institutional controls or activity and use limitations specified in the documents establishing the institutional controls or activity and use limitations, the director of environmental protection may issue an order voiding the covenant not to sue issued under section 3746.12 of the Revised Code for the property in connection with the voluntary action for which the institutional controls or activity and use limitations were established is hereby declared to be void on and after the date of the commencement of the noncomplying use.

(2) An order issued by the director under division (B)(1) of this section is a final action appealable under Chapter 3745. of the Revised Code.

Sec. 3746.122. (A) As used in this section:

(1) "Bona fide prospective purchaser" has the same meaning as in 42 U.S.C. 9601, including the requirement that a person acquired ownership of a facility after January 11, 2002.

(2) "Facility" has the same meaning as in 42 U.S.C. 9601.

(B) In a civil action to address a release or threatened release of hazardous substances from a facility, it is an affirmative defense, and a person is immune from liability to this state for performing investigational and remedial activities, if all of the following apply:

(1) The person demonstrates that the person is a bona fide prospective purchaser of the facility.

(2) The state's cause of action against the person rests upon the person's status as an owner or operator of the facility.

(3) The person does not impede a response action or a natural resource restoration at the facility.

(C) Nothing in this section precludes the application of section 3746.02 of the Revised Code

to this section.

(D) The affirmative defense provided for in division (B) of this section may be asserted in either of the following:

(1) A civil action pending on the effective date of this section;

(2) A civil action initiated after the effective date of this section.

(E) The general assembly finds that this section is remedial in nature. Therefore, the general assembly hereby declares its purpose in enacting this section is to do both of the following:

(1) Adopt the federal definition of bona fide prospective purchaser in 42 U.S.C. 9601 for purposes of this section;

(2) Extend the affirmative defense as specified in division (D)(1) of this section.

SECTION 2. That existing sections 3746.02 and 3746.05 of the Revised Code are hereby repealed.

---

*Speaker* \_\_\_\_\_ *of the House of Representatives.*

---

*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

---

*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

---

*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

---

*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_