

Senate Bill 277

By: Senators Cagle of the 49th, Pearson of the 51st and Hudgens of the 47th

AS PASSED

**A BILL TO BE ENTITLED
AN ACT**

To amend Article 9 of Chapter 8 of Title 12 of the Official Code of Georgia Annotated, the "Georgia Hazardous Site Reuse and Redevelopment Act," so as to change certain provisions relating to definitions; to change certain provisions relating to criteria for property to qualify for limitation of liability; to change certain provisions relating to exceptions to limitation of liability; to provide that certain persons who purchased property after July 1, 2002, and before July 1, 2005, shall be treated as prospective purchasers for purposes of said Act; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 9 of Chapter 8 of Title 12 of the Official Code of Georgia Annotated, the "Georgia Hazardous Site Reuse and Redevelopment Act," is amended by striking Code Section 12-8-202, relating to definitions, and inserting in lieu thereof the following:

"12-8-202.

(a) Unless otherwise provided in this article, the definition of all terms included in Code Sections 12-8-62 and 12-8-92 shall be applicable to this article.

(b) As used in this article, the term:

(1) 'Certificate of compliance' means the certification of compliance with a corrective action plan required by Code Section 12-8-207.

(2) 'Corrective action plan' means the corrective action plan required by Code Section 12-8-207.

(3) 'Groundwater' means any subsurface water that is in a zone of saturation.

(4) 'Hazardous site inventory' means the hazardous site inventory published by the division pursuant to Code Section 12-8-97.

(4.1) 'Petroleum' means petroleum, including crude oil or any fraction thereof (including gasoline, gasohol, diesel fuel, fuel oils including #2 fuel oil, kerosene, or jet turbine fuel)

1 that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit
2 and 14.7 pounds per square inch absolute).

3 (5) 'Preexisting release' means a release, as such term is defined in paragraph (11) of
4 Code Section 12-8-92, which occurred prior to the prospective purchaser's application
5 for a limitation of liability pursuant to this article. The term 'preexisting release' includes
6 but is not limited to release of petroleum even if such release is from an underground
7 storage tank system as defined in paragraph (18) of Code Section 12-13-3.

8 (6) 'Prospective purchaser' means a person who intends to purchase a property where
9 there is a preexisting release.

10 (7) 'Qualifying property' means a property which meets the criteria of Code Section
11 12-8-205 which a prospective purchaser intends to purchase and bring into compliance
12 with the risk reduction standards.

13 (8) 'Risk reduction standards' means those standards promulgated by the board pursuant
14 to Part 2 of Article 3 of this chapter.

15 (9) 'Soil' means any unconsolidated earth material, together with any unconsolidated
16 plant or animal matter or foreign material that has been incorporated into it, that either
17 consists of or remains within, or comes to be deposited on, native soil or regolith.

18 (10) 'Source material' means any ~~hazardous waste, hazardous substance, or hazardous~~
19 ~~constituent that has been released or disposed of that requires notification in accordance~~
20 ~~with the rules promulgated by the board pursuant to Part 2 of Article 3 of this chapter~~
21 preexisting release that acts or may likely act as a reservoir for continued releases to
22 groundwater, soil, surface water, or air or act as a source for direct exposure."

23 SECTION 2.

24 Said article is further amended by striking Code Section 12-8-205, relating to criteria for
25 property to qualify for limitation of liability, and inserting in lieu thereof the following:

26 "12-8-205.

27 In order to be considered a qualifying property for a limitation of liability as provided in
28 Code Section 12-8-207, a property must meet the following criteria:

29 (1) The property must have a preexisting release;

30 (2) Any lien filed under subsection (e) of Code Section 12-8-96 or subsection (b) of
31 Code Section 12-13-12 against the property must be satisfied or settled and released by
32 the director pursuant to Code Section 12-8-94 or Code Section 12-13-6, and satisfactory
33 provision must have been made as determined by the director for the repayment to the
34 division of any funds expended by the division from the federal Leaking Underground
35 Storage Tank Trust Fund;

36 (3) The property must not:

(A) Be listed on the federal National Priorities List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq.;

(B) Be currently undergoing response activities required by an order of the regional administrator of the federal Environmental Protection Agency issued pursuant to the provisions of such act; or

(C) Be a hazardous waste facility as defined in Code Section 12-8-62; and

(4) The property shall meet other criteria as may be established by the board as provided in this article and Article 3 of this chapter."

SECTION 3.

Said article is further amended by striking subsection (c) of Code Section 12-8-208, relating to exceptions to limitation of liability, and inserting in lieu thereof the following:

"(c) The limitation of liability provided by this article shall be fully transferable to the heirs, assigns, successors in title, and designees of the person to whom such limitation of liability is granted; provided, however, that in no event shall the director's approval of a corrective action plan or concurrence with a certification of compliance operate to absolve from liability any party deemed to be a person who has contributed or is contributing to a release at the qualifying property. ~~A; and provided, further, that a~~ transfer of the title to the qualifying property or any portion thereof from the prospective purchaser back to the owner of the property from which the subject property was purchased, any other party deemed to be a person who has contributed or is contributing to a release at the property, or any person disqualified from obtaining a limitation of liability under Code Section 12-8-206 shall terminate any limitation of liability applicable to the transferor under this article."

SECTION 4.

Said article is further amended by adding a new Code section to read as follows:

"12-8-210.

The provisions of this article applicable to prospective purchasers shall also apply to any person who purchased a property after July 1, 2002, and before July 1, 2005, where there was a preexisting release at the time of purchase, such purchaser did not cause or contribute to such preexisting release, and such purchaser applies for the limitation of liability provided by this article on or before January 1, 2006."

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.