

House Bill 957

By: Representatives Williams of the 119th, Smith of the 70th, Harden of the 148th, and McCall of the 33rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 9 of Chapter 8 of Title 12 of the Official Code of Georgia Annotated, the
2 "Georgia Hazardous Site Reuse and Redevelopment Act," so as provide a new short title; to
3 revise definitions; to expand the limitation of liability to certain purchasers; to provide for
4 transfer of limitation of liability; to provide for applicability; to provide for related matters;
5 to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 9 of Chapter 8 of Title 12 of the Official Code of Georgia Annotated, the "Georgia
9 Hazardous Site Reuse and Redevelopment Act," is amended by revising Code Section
10 12-8-200, relating to short title, as follows:

11 "12-8-200.

12 This article shall be known and may be cited as the 'Georgia ~~Hazardous Site Reuse and~~
13 ~~Redevelopment~~ Brownfield Act."

14 **SECTION 2.**

15 Said article is further amended by revising Code Section 12-8-202, relating to definitions,
16 as follows:

17 "12-8-202.

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

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

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

23 ~~(2)~~(1) 'Corrective action plan' means the corrective action plan required by Code Section
24 12-8-207.

25 ~~(3)~~(2) 'Ground water' means any subsurface water that is in a zone of saturation.

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

28 ~~(4.1)(3)~~ (3) 'Petroleum' means petroleum, including crude oil or any fraction thereof
 29 (including gasoline, gasohol, diesel fuel, fuel oils including #2 fuel oil, kerosene, or jet
 30 turbine fuel), that is liquid at standard conditions of temperature and pressure (60 degrees
 31 Fahrenheit and 14.7 pounds per square inch absolute).

32 ~~(5)(4)~~ (4) 'Preexisting release' means a release, as such term is defined in paragraph (11) of
 33 Code Section 12-8-92, which occurred prior to the prospective purchaser's application for
 34 a limitation of liability pursuant to this article. The term 'preexisting release' includes but
 35 is not limited to release of petroleum even if such release is from an underground storage
 36 tank system as defined in paragraph (18) of Code Section 12-13-3.

37 (5) 'Property interest' means any interest in real property, without regard to whether such
 38 interest is exclusive or possessory.

39 (6) 'Prospective purchaser' means a person who intends to ~~purchase~~ acquire a property
 40 interest in a property where there is a preexisting release or a person who has applied for
 41 a limitation of liability pursuant to this article within 30 days of acquiring ~~title to such~~
 42 property interest in a property where there is a preexisting release.

43 (7) 'Qualifying property' means a property which meets the criteria of Code Section
 44 12-8-205 ~~which a prospective purchaser intends to purchase and bring into compliance~~
 45 ~~with the risk reduction standards.~~

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

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

51 (10) 'Source material' means any preexisting release that acts or may likely act as a
 52 reservoir for continued releases to ground water, soil, surface water, or air or act as a
 53 source for direct exposure."

54 **SECTION 3.**

55 Said article is further amended by revising Code Section 12-8-205, relating to criteria used
 56 to determine whether a property qualifies for a limitation of liability, as follows:

57 "12-8-205.

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

60 (1) The property ~~must~~ shall have a preexisting release;

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

67 (3) The property ~~must~~ shall not:

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

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

74 (C) Be a hazardous waste facility, as defined in Code Section 12-8-62, that is currently
 75 subject to a permit for the treatment, storage, or disposal of hazardous waste issued
 76 pursuant to Code Section 12-8-66; and

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

79

SECTION 4.

80 Said article is further amended in Code Section 12-8-207, relating to limitation of liability
 81 for prospective purchasers, by revising subsection (a) as follows:

82 "(a)(1) Upon the director's approval of the prospective purchaser corrective action plan
 83 or concurrence with the certification of compliance described in this Code section,
 84 whichever first occurs, a prospective purchaser shall not be liable to the state or any third
 85 party for costs incurred in the remediation of, equitable relief relating to, or damages
 86 resultant from the preexisting release, nor shall the prospective purchaser be required to
 87 certify compliance with risk reduction standards for ground water, perform corrective
 88 action, or otherwise be liable for any preexisting releases to ground water associated with
 89 the qualifying property.

90 (2) The limitation of liability provided under this Code section shall also benefit a
 91 qualifying purchaser who applies for a limitation of liability within 30 days following
 92 acquisition of a property interest in the qualifying property and subsequently receives the
 93 director's approval of a prospective purchaser corrective action plan or concurrence with
 94 a certification of compliance described in this Code section."

95 **SECTION 5.**

96 Said article is further amended in Code Section 12-8-208, relating to exceptions to the
97 limitation of liability, by revising subsections (a) and (c) as follows:

98 "(a) The limitation of liability provided by subsection (a) of Code Section 12-8-207 shall
99 be contingent upon the prospective purchaser's good faith implementation of the corrective
100 action plan as approved by the director as well as the certification of compliance with the
101 risk reduction standards and corrective action requirements. Such limitation of liability
102 shall not be applicable to any activities conducted on the qualifying property before the
103 director's approval of the corrective action plan or concurrence with a certification of
104 compliance, whichever first occurs, or during any time the director's approval of the
105 corrective action plan has been suspended or revoked."

106 "~~(c)(1) The limitation of liability provided by this article shall automatically inure to the~~
107 ~~benefit of heirs, assigns, successors in title, and designees of the person to whom such~~
108 ~~limitation of liability is granted; provided, however, that in no event shall the director's~~
109 ~~approval of a corrective action plan or concurrence with a certification of compliance~~
110 ~~operate to absolve from liability any party deemed to be a person who has contributed or~~
111 ~~is contributing to a release at the qualifying property; and provided, further, that a transfer~~
112 ~~of the title to the qualifying property or any portion thereof from the prospective~~
113 ~~purchaser to any other party deemed to be a person who has contributed or is contributing~~
114 ~~to a release at the property, to any person disqualified from obtaining a limitation of~~
115 ~~liability under Code Section 12-8-206, or back to the owner of the property from which~~
116 ~~the subject property was purchased shall terminate any limitation of liability applicable~~
117 ~~to the transferor under this article. The limitation of liability provided by this article shall~~
118 ~~survive any subsequent change in the nature of a prospective purchaser's interest in the~~
119 ~~qualifying property and shall automatically inure to the benefit of heirs, assigns,~~
120 ~~successors in title, and designees of the person to whom such limitation of liability is~~
121 ~~granted and to any person acquiring any other property interest in the property for which~~
122 ~~the limitation of liability was granted; provided, however, that in no event shall the~~
123 ~~director's approval of a corrective action plan or concurrence with a certification of~~
124 ~~compliance operate to absolve from liability any party deemed to be a person who has~~
125 ~~contributed or is contributing to a release at the qualifying property.~~

126 (2) Any transfer of the title to a property or any portion thereof for which a limitation of
127 liability has been granted to any party that would be disqualified from obtaining a
128 limitation of liability for such property under Code Section 12-8-206 shall terminate any
129 limitation of liability applicable to the transferor under this article."

130 **SECTION 6.**

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

132 "12-8-211.

133 The limitation of liability provided under this article shall also apply to any qualifying
134 prospective purchaser who, after May 1, 2012, has applied for a limitation of liability for
135 a qualifying property and who subsequently obtains the director's approval of a prospective
136 purchaser corrective action plan or concurrence with a certification of compliance for the
137 qualifying property."

138 **SECTION 7.**

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