

House Bill 957 (AS PASSED HOUSE AND SENATE)

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

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 title or any other new property interest in the qualifying property and  
 93 subsequently receives the director's approval of a prospective purchaser corrective action  
 94 plan or concurrence with 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 voluntary transfer of the title to a property or any portion thereof for which a  
127 limitation of liability has been granted to any party that would be disqualified from  
128 obtaining a limitation of liability for such property under Code Section 12-8-206 shall  
129 terminate any 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.