

**As Re-reported by the Senate Agriculture and Natural Resources
Committee**

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Am. H. B. No. 168

Representative Arndt

**Cosponsors: Representatives Hambley, Baldrige, Blessing, Carruthers,
Crossman, Dean, Ginter, Green, Greenspan, Grendell, Holmes, A., Hoops, Jones,
Koehler, Manning, G., McClain, Patterson, Patton, Perales, Plummer, Reineke,
Riedel, Rogers, Romanchuk, Ryan, Scherer, Seitz, Smith, R., Smith, T., Stein,
Upchurch, West**

Senators Hackett, Hoagland, Schaffer

A BILL

To amend sections 3746.02 and 3746.05 and to enact 1
section 3746.122 of the Revised Code to 2
establish an affirmative defense to a release or 3
threatened release of hazardous substances from 4
a facility for certain bona fide prospective 5
purchasers. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3746.02 and 3746.05 be amended 7
and section 3746.122 of the Revised Code be enacted to read as 8
follows: 9

Sec. 3746.02. (A) Nothing in this chapter applies to any 10
of the following: 11

(1) Property for which a voluntary action under this 12
chapter is precluded by federal law or regulations adopted under 13
federal law, including, without limitation, any of the following 14

federal laws or regulations adopted thereunder:	15
(a) The "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended;	16 17
(b) The "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended;	18 19
(c) The "Toxic Substances Control Act," 90 Stat. 2003 (1976), 15 U.S.C.A. 2601, as amended;	20 21
(d) The "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 2779, 42 U.S.C.A. 9601, as amended;	22 23 24
(e) The "Safe Drinking Water Act," 88 Stat. 1661 (1974), 42 U.S.C.A. 300(f), as amended.	25 26
(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;	27 28 29 30
(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;	31 32 33 34 35
(4) Property that is subject to Chapter 1509. of the Revised Code;	36 37
(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	38 39 40 41 42

petroleum from or at the property poses a substantial threat to 43
public health or safety or the environment, and ~~the~~ either of 44
the following applies: 45

(a) The person subject to the letter does not present 46
sufficient evidence to the director that the person has entered 47
into the voluntary action program under this chapter and is 48
proceeding expeditiously to address that threat. 49

(b) The person cannot demonstrate the person is a bona 50
fide prospective purchaser under section 3746.122 of the Revised 51
Code. ~~For~~ 52

For the purposes of this division, the evidence 53
constituting sufficient evidence of entry into the voluntary 54
action program under this chapter shall be defined by the 55
director by rules adopted under section 3746.04 of the Revised 56
Code. 57

(B) The application of any provision of division (A) of 58
this section to a portion of property does not preclude 59
participation in the voluntary action program under this chapter 60
in connection with other portions of the property where those 61
provisions do not apply. 62

(C) As used in this section, "property" means any parcel 63
of real property, or portion thereof, and any improvements 64
thereto. 65

Sec. 3746.05. (A) A remedy or remedial activity conducted 66
under this chapter may attain applicable standards otherwise 67
established in this chapter and rules adopted under it through 68
the use of institutional controls or activity and use 69
limitations that restrict the use of a property or through the 70
removal of, treatment of, transportation for treatment or 71

disposal of, disposal of, or use of engineering controls that 72
contain or control the release of hazardous substances or 73
petroleum at or from a property. Any such institutional controls 74
or activity and use limitations that restrict the use of a 75
property shall ensure that the property is used only for 76
purposes that comply with the applicable standards established 77
in this chapter and rules adopted under it pertaining to the 78
intended use of the property after the completion of the 79
voluntary action, as the intended use is specified in the 80
documents establishing the institutional controls or activity 81
and use limitations. ~~If~~ 82

(B) (1) If a property is subject to institutional controls 83
or activity and use limitations and is put to a use that does 84
not comply with the institutional controls or activity and use 85
limitations specified in the documents establishing the 86
institutional controls or activity and use limitations, the 87
director of environmental protection may issue an order voiding 88
the covenant not to sue issued under section 3746.12 of the 89
Revised Code for the property in connection with the voluntary 90
action for which the institutional controls or activity and use 91
limitations were established ~~is hereby declared to be void on~~ 92
~~and after the date of the commencement of the noncomplying use.~~ 93

(2) An order issued by the director under division (B) (1) 94
of this section is a final action appealable under Chapter 3745. 95
of the Revised Code. 96

Sec. 3746.122. (A) As used in this section: 97

(1) "Bona fide prospective purchaser" has the same meaning 98
as in 42 U.S.C. 9601, including the requirement that a person 99
acquired ownership of a facility after January 11, 2002. 100

<u>(2) "Facility" has the same meaning as in 42 U.S.C. 9601.</u>	101
<u>(B) In a civil action to address a release or threatened</u>	102
<u>release of hazardous substances from a facility, it is an</u>	103
<u>affirmative defense, and a person is immune from liability to</u>	104
<u>this state for performing investigational and remedial</u>	105
<u>activities, if all of the following apply:</u>	106
<u>(1) The person demonstrates that the person is a bona fide</u>	107
<u>prospective purchaser of the facility.</u>	108
<u>(2) The state's cause of action against the person rests</u>	109
<u>upon the person's status as an owner or operator of the</u>	110
<u>facility.</u>	111
<u>(3) The person does not impede a response action or a</u>	112
<u>natural resource restoration at the facility.</u>	113
<u>(C) Nothing in this section precludes the application of</u>	114
<u>section 3746.02 of the Revised Code to this section.</u>	115
<u>(D) The affirmative defense provided for in division (B)</u>	116
<u>of this section may be asserted in either of the following:</u>	117
<u>(1) A civil action pending on the effective date of this</u>	118
<u>section;</u>	119
<u>(2) A civil action initiated after the effective date of</u>	120
<u>this section.</u>	121
<u>(E) The general assembly finds that this section is</u>	122
<u>remedial in nature. Therefore, the general assembly hereby</u>	123
<u>declares its purpose in enacting this section is to do both of</u>	124
<u>the following:</u>	125
<u>(1) Adopt the federal definition of bona fide prospective</u>	126
<u>purchaser in 42 U.S.C. 9601 for purposes of this section;</u>	127

<u>(2) Extend the affirmative defense as specified in</u>	128
<u>division (D) (1) of this section.</u>	129
Section 2. That existing sections 3746.02 and 3746.05 of	130
the Revised Code are hereby repealed.	131