

**As Reported by the House Civil Justice Committee**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**H. B. No. 168**

**Representative Arndt**

**Cosponsor: Representative Hambley**

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**A BILL**

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

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

**Section 1.** That section 3746.02 be amended and section 6  
3746.122 of the Revised Code be enacted to read as follows: 7

**Sec. 3746.02.** (A) Nothing in this chapter applies to any 8  
of the following: 9

(1) Property for which a voluntary action under this 10  
chapter is precluded by federal law or regulations adopted under 11  
federal law, including, without limitation, any of the following 12  
federal laws or regulations adopted thereunder: 13

(a) The "Federal Water Pollution Control Act Amendments of 14  
1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended; 15

(b) The "Resource Conservation and Recovery Act of 1976," 16  
90 Stat. 2806, 42 U.S.C.A. 6921, as amended; 17

(c) The "Toxic Substances Control Act," 90 Stat. 2003	18
(1976), 15 U.S.C.A. 2601, as amended;	19
(d) The "Comprehensive Environmental Response,	20
Compensation, and Liability Act of 1980," 94 Stat. 2779, 42	21
U.S.C.A. 9601, as amended;	22
(e) The "Safe Drinking Water Act," 88 Stat. 1661 (1974),	23
42 U.S.C.A. 300(f), as amended.	24
(2) Those portions of property where closure of a	25
hazardous waste facility or solid waste facility is required	26
under Chapter 3734. of the Revised Code or rules adopted under	27
it;	28
(3) Except as provided in division (A) (3) of section	29
3737.88 of the Revised Code, properties that are subject to	30
rules adopted by the fire marshal under Chapter 3737. of the	31
Revised Code pertaining to corrective actions as defined in	32
section 3737.87 of the Revised Code;	33
(4) Property that is subject to Chapter 1509. of the	34
Revised Code;	35
(5) Any other property if the director of environmental	36
protection has issued a letter notifying the owner or operator	37
of the property that the director will issue an enforcement	38
order under Chapter 3704., 3734., or 6111. of the Revised Code,	39
a release or threatened release of a hazardous substance or	40
petroleum from or at the property poses a substantial threat to	41
public health or safety or the environment, and <del>the</del> <u>either of</u>	42
<u>the following applies:</u>	43
<u>(a) The</u> person subject to the letter does not present	44
sufficient evidence to the director that the person has entered	45
into the voluntary action program under this chapter and is	46

proceeding expeditiously to address that threat. 47

(b) The person cannot demonstrate the person is a bona 48  
fide prospective purchaser under section 3746.122 of the Revised 49  
Code. For 50

For the purposes of this division, the evidence 51  
constituting sufficient evidence of entry into the voluntary 52  
action program under this chapter shall be defined by the 53  
director by rules adopted under section 3746.04 of the Revised 54  
Code. 55

(B) The application of any provision of division (A) of 56  
this section to a portion of property does not preclude 57  
participation in the voluntary action program under this chapter 58  
in connection with other portions of the property where those 59  
provisions do not apply. 60

(C) As used in this section, "property" means any parcel 61  
of real property, or portion thereof, and any improvements 62  
thereto. 63

**Sec. 3746.122.** (A) As used in this section, "bona fide 64  
prospective purchaser" and "facility" have the same meanings as 65  
in 42 U.S.C. 9601. 66

(B) In a civil action to address a release or threatened 67  
release of hazardous substances from a facility, it is an 68  
affirmative defense, and a person is immune from liability to 69  
this state for performing investigational and remedial 70  
activities, if all of the following apply: 71

(1) The person demonstrates that the person is a bona fide 72  
prospective purchaser of the facility. 73

(2) The state's cause of action against the person rests 74

<u>upon the person's status as an owner or operator of the</u>	75
<u>facility.</u>	76
<u>(3) The person does not impede a response action or a</u>	77
<u>natural resource restoration at the facility.</u>	78
<u>(C) Nothing in this section precludes the application of</u>	79
<u>section 3746.02 of the Revised Code to this section.</u>	80
<b>Section 2.</b> That existing section 3746.02 of the Revised	81
Code is hereby repealed.	82