

**As Reported by the Senate Agriculture and Natural Resources  
Committee**

**133rd General Assembly**

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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  
section 3746.122 of the Revised Code to  
establish an affirmative defense to a release or  
threatened release of hazardous substances from  
a facility for certain bona fide prospective  
purchasers.

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

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

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

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

federal laws or regulations adopted thereunder: 15

(a) The "Federal Water Pollution Control Act Amendments of 16  
1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended; 17

(b) The "Resource Conservation and Recovery Act of 1976," 18  
90 Stat. 2806, 42 U.S.C.A. 6921, as amended; 19

(c) The "Toxic Substances Control Act," 90 Stat. 2003 20  
(1976), 15 U.S.C.A. 2601, as amended; 21

(d) The "Comprehensive Environmental Response, 22  
Compensation, and Liability Act of 1980," 94 Stat. 2779, 42 23  
U.S.C.A. 9601, as amended; 24

(e) The "Safe Drinking Water Act," 88 Stat. 1661 (1974), 25  
42 U.S.C.A. 300(f), as amended. 26

(2) Those portions of property where closure of a 27  
hazardous waste facility or solid waste facility is required 28  
under Chapter 3734. of the Revised Code or rules adopted under 29  
it; 30

(3) Except as provided in division (A) (3) of section 31  
3737.88 of the Revised Code, properties that are subject to 32  
rules adopted by the fire marshal under Chapter 3737. of the 33  
Revised Code pertaining to corrective actions as defined in 34  
section 3737.87 of the Revised Code; 35

(4) Property that is subject to Chapter 1509. of the 36  
Revised Code; 37

(5) Any other property if the director of environmental 38  
protection has issued a letter notifying the owner or operator 39  
of the property that the director will issue an enforcement 40  
order under Chapter 3704., 3734., or 6111. of the Revised Code, 41  
a release or threatened release of a hazardous substance or 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, "bona fide 97  
prospective purchaser" and "facility" have the same meanings as 98  
in 42 U.S.C. 9601. 99

(B) In a civil action to address a release or threatened 100  
release of hazardous substances from a facility, it is an 101

affirmative defense, and a person is immune from liability to 102  
this state for performing investigational and remedial 103  
activities, if all of the following apply: 104

(1) The person demonstrates that the person is a bona fide 105  
prospective purchaser of the facility. 106

(2) The state's cause of action against the person rests 107  
upon the person's status as an owner or operator of the 108  
facility. 109

(3) The person does not impede a response action or a 110  
natural resource restoration at the facility. 111

(C) Nothing in this section precludes the application of 112  
section 3746.02 of the Revised Code to this section. 113

**Section 2.** That existing sections 3746.02 and 3746.05 of 114  
the Revised Code are hereby repealed. 115