



SPONSOR: Rep. Heffernan & Sen. Hansen
Reps. Bentz, Brady; Sens. Ennis, Wilson

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 208

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE DELAWARE HAZARDOUS
SUBSTANCE CLEANUP ACT.

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

1 Section 1. Amend § 9103, Title 7 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 9103. Definitions.

4 As used in this chapter:

5 (6) "Contractual relationship" means, but is not limited to, land contracts, deeds, easements, leases or other
6 instruments transferring title or possession. A "contractual relationship" does not exist if the real property on which the
7 facility concerned is located was acquired by the person after the disposal or placement of the hazardous substance on,
8 in, or at the facility, and 1 or more of the circumstances described in paragraph (6)a., b., or c. of this section is also
9 established by the person by a preponderance of the evidence:

10 a. At the time the person acquired the facility the person did not know and had no reason to know that any
11 hazardous substance which is the subject of the release or threatened release was disposed of on, in or at the
12 facility.

13 ~~b. The person is a government entity which acquired the facility by escheat or through any other~~
14 ~~involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or~~
15 ~~condemnation.~~

16 b. The person is any of the following:

17 1. A state, county, or municipal government entity which acquired the facility through seizure or
18 otherwise in connection with law enforcement authority, or through bankruptcy, tax delinquency,
19 abandonment, or other circumstances in which the government entity acquired title or control by virtue of the
20 exercise of its lawful governmental authority.

21 2. A land bank created pursuant to the provisions of Chapter 47 of Title 31, The Delaware
22 Neighborhood Conservation and Land Banking Act, which acquired the facility in accordance with the
23 requirements of the Act.

24 c. The person acquired the facility by inheritance or bequest.

25 (20) “Owner or operator” means:

26 a. Any person owning or operating a facility.

27 b. Any person who owned, operated, or otherwise controlled activities at a facility.

28 c. The term “owner or operator” does not include ~~an agency of the State or unit of local government that~~
29 ~~acquired title or control involuntarily through bankruptcy, tax delinquency, abandonment or other circumstances.~~
30 any of the following:

31 1. An agency of the State or unit of local government that acquired title or control through
32 bankruptcy, tax delinquency, abandonment or other circumstances by which it exercised its lawful
33 governmental authority.

34 2. A land bank created pursuant to the provisions of Chapter 47 of Title 31, The Delaware
35 Neighborhood Conservation and Land Banking Act, which acquired the facility in accordance with the
36 requirements of the Act.

37 d. The term “control” does not include regulation of the activity by a federal, state or local government
38 agency.

39 e. The term “owner or operator” does not include a person, who, without participating in the management
40 of a facility, holds indicia of ownership primarily to protect that person’s security interest in the facility.

41 f. The term “owner or operator” does not include a person who, without acquiring legal title, conducts or
42 directs activities in connection with the actual or potential acquisition or evaluation of a facility, including due
43 diligence, site inspections, site assessments, or other pre-closing activities in connection with the acquisition of a
44 facility.

SYNOPSIS

This Act amends the Delaware Hazardous Substance Control Act to reflect recent amendments to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This Act protects state, county, and municipal government entities from being deemed liable as “owners or operators” of hazardous substance release sites when they take title to or control of such properties through the exercise of their lawful governmental powers.

Additionally, this Act protects land banks established pursuant to the Delaware Neighborhood Conservation and Land Banking Act when they assume ownership of potentially contaminated properties in accordance with the provisions and requirements of the Land Banking Act.