

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 113, L.D. 156, Bill, "An Act to Assist in the Cleanup of Contaminated Property"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'38 MRSA §1367, sub-§3, as enacted by PL 1983, c. 569, §1, is amended to read:

3. Act or omission. An act or omission of a 3rd party who is not his that person's employee or agent. A person seeking relief from liability for the acts or omissions of a 3rd party shall also demonstrate by a preponderance of the evidence that he that person exercised due care with respect to the hazardous substance and uncontrolled site concerned, taking into consideration the characteristics of that substance and site, in light of all relevant facts and circumstances and that he that person took precautions against foreseeable acts or omissions of any such 3rd party and the consequences that could foreseeably result from such acts or omissions~~+-e~~ .

A. For purposes of this subsection, a person may demonstrate the exercise of due care with respect to any uncontrolled site that that person has acquired after hazardous substances were located on that uncontrolled site, if that person shows that at the time that person acquired the uncontrolled site the person did not know and had no reason to know that any hazardous substance that is the subject of the release or threatened release was disposed on, in or at the uncontrolled site.

B. To establish that a person meets the criteria of paragraph A, a person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous

2 ownership and uses of the property consistent with good
3 commercial or customary practice in an effort to minimize
4 liability. For purposes of this paragraph, the court shall
5 take into account any specialized knowledge or experience on
6 the part of the person, the relationship of the purchase
7 price to the value of the property if uncontaminated,
8 commonly known or reasonably ascertainable information about
9 the property, the obviousness of the presence or likely
10 presence of contamination of the property, and the ability
11 to detect that contamination by appropriate inspection; or'

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FISCAL NOTE

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15 The costs associated with the Department of Environmental
16 Protection providing legal and financial assistance to evaluate
17 innocent landowner claims and developing rules will be absorbed
18 by the department utilizing existing budgeted resources from the
19 Uncontrolled Sites Fund.

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STATEMENT OF FACT

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25 This amendment strikes the original bill. This amendment
26 protects innocent landowners from liability on uncontrolled
27 hazardous substance sites where hazardous substances came to be
28 located solely through the conduct of the 3rd parties before the
29 innocent landowners acquired the sites. The Legislature intends
30 that the innocent landowner defense created by this amendment for
31 liability under the Maine Revised Statutes, Title 38, section
32 1367, be the same as the innocent landowner defense available
33 under the Comprehensive Environmental Response, Compensation and
34 Liability Act of 1980, CERCLA, 42 United States Code Sections
35 9601 (35) (A) and (B) and 9703 (b) (3).

36

37 Opinions of courts as well as rules and guidances that
38 delineated the scope of the innocent landowner defense available
39 under CERCLA may be used to delineate the scope of the innocent
40 landowner defense created by this amendment.