

MAINE STATE LEGISLATURE

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L.D. 273

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MAJORITY
JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 236, L.D. 273, Bill, "An Act to Clarify that Polluters Who Violate the Environmental Laws on Private Land are Liable for Their Actions"

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

Sec. 1. 12 MRSA §685-C, sub-§11 is enacted to read:

11. Landowner liability for actions of others. An owner, lessee, manager, easement holder or occupant of premises is not subject to criminal sanctions or civil penalties or forfeitures for a violation of laws or rules enforced by the commission if that person provides substantial credible evidence that the violation was committed by another person other than a contractor, employee or agent of the owner, lessee, manager, easement holder or occupant. This subsection does not prevent the commission or a court from requiring an owner, lessee, manager, easement holder or occupant of premises to remediate or abate environmental hazards or damage or to reimburse the commission for the cost of remediation or abatement. An owner, lessee, manager, easement holder or occupant of premises is subject to criminal sanctions or civil penalties or forfeitures for failure to comply with a lawful administrative order or court order to remediate or abate environmental hazards or damage.

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COMMITTEE AMENDMENT "A" to H.P. 236, L.D. 273

2 A. The commission shall investigate substantiated
allegations by an owner, lessee, manager, easement holder or
occupant that the violation was caused by another person.

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6 B. If an owner, lessee, manager, easement holder or
occupant is subjected to criminal sanctions or civil
penalties or forfeitures, or if such a person is required to
8 remediate or abate environmental hazards or damage as a
10 result of violations by another person, the owner, lessee,
manager, easement holder or occupant has a cause of action
12 against the actual violator to recover all damages and
costs, including attorney's fees, incurred in connection
14 with the environmental damage, and all costs, including
attorney's fees, incurred in bringing the action to recover.

16 **Sec. 2. 38 MRSA §347-A, sub-§7 is enacted to read:**

18 **7. Landowner liability for actions of others.** An owner,
lessee, manager, easement holder or occupant of premises is not
20 subject to criminal sanctions or civil penalties or forfeitures
for a violation of laws or rules enforced by the department or
22 the board if that person provides substantial credible evidence
that the violation was committed by another person other than a
24 contractor, employee or agent of the owner, lessee, manager,
easement holder or occupant. This subsection does not prevent
26 the department, the board or a court from requiring an owner,
lessee, manager, easement holder or occupant of premises to
28 remediate or abate environmental hazards or damage or to
reimburse the department for the cost of such remediation or
30 abatement. An owner, lessee, manager, easement holder or
occupant of premises is subject to criminal sanctions or civil
32 penalties or forfeitures for failure to comply with a lawful
administrative order or court order to remediate or abate
34 environmental hazards or damage.

36 A. The department shall investigate substantiated
allegations by an owner, lessee, manager, easement holder or
38 occupant that the violation was caused by another person.

40 B. If an owner, lessee, manager, easement holder or
occupant is subjected to criminal sanctions or civil
42 penalties or forfeitures, or if such a person is required to
remediate or abate environmental hazards or damage as a
44 result of violations by another person, the owner, lessee,
manager, easement holder or occupant has a cause of action
46 against the actual violator to recover all damages and
costs, including attorney's fees, incurred in connection
48 with the environmental damage, and all costs, including
attorney's fees, incurred in bringing the action to recover.

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COMMITTEE AMENDMENT

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2 C. This subsection does not apply to persons who are
3 defined as "responsible parties" under chapter 3,
4 subchapters II-A and II-B; chapter 13, subchapter II-A; or
5 chapter 13-B.'

6 Further amend the bill by inserting at the end before the
7 summary the following:

10 **FISCAL NOTE**

12 The Maine Land Use Regulation Commission within the
13 Department of Conservation and the Department of Environmental
14 Protection will incur some minor additional costs to investigate
15 certain allegations of 3rd-party violations. These costs can be
16 absorbed within the departments' existing budgeted resources.'

18 **SUMMARY**

20 This amendment, the majority report of the Joint Standing
21 Committee on Judiciary, replaces the bill. It provides that an
22 owner, lessee, manager, easement holder or occupant of premises
23 is not subject to criminal penalties or civil penalties or
24 forfeitures for violation of laws or rules enforced by the Maine
25 Land Use Regulation Commission or the Department of Environmental
26 Protection if that person provides substantial, credible evidence
27 that the violation was committed by a 3rd party who is not an
28 employee, contractor or agent of the owner, lessee, manager,
29 easement holder or occupant. The amendment requires the
30 department and the commission to investigate substantiated
31 allegations that a 3rd party committed the violation. It also
32 clarifies that this does not exempt the owner, lessee, manager,
33 easement holder or occupant from the obligation to remediate or
34 abate the environmental hazard or damage caused by the
35 violation. Finally, the amendment provides that the exemption
36 does not apply to a person who is designated a "responsible
37 party" under the laws relating to oil discharge, tire stockpiles
38 and uncontrolled hazardous substance sites. It also adds a
39 fiscal note to the bill.
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