

Act 260 of the 1989 Regular Session.

Act 260

SB345

By: Senator Wilson

"AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE TO PROVIDE FOR INNOCENT OWNER'S REMEDIES AND DEFENSES UNDER TITLE 18, CHAPTER 49, AND TITLE 8, CHAPTERS 6 AND 7; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code 18-49-103 is amended to add an additional subsection to read as follows:

"(d) Whenever a mortgagee reasonably believes that mortgaged property has or will be affected by a release or threatened release of any hazardous substance including, but not limited to, those defined by 42 U.S.C. 9601 (18), (22), or Arkansas Code Annotated 8-7-403 (a)(8), or Arkansas Code Annotated 8-7-503 (8), the mortgagee may proceed against the mortgagor personally to recover the debt, without need to first seek a sale of the mortgaged property."

SECTION 2. Arkansas Code 8-6-205 is amended to add a new subsection to read:

"(c) No person shall be liable for any violation of this subchapter, or of any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission issued pursuant to this subchapter, if the violation results solely from the act or omission of a third party."

SECTION 3. Arkansas Code 8-7-409 is amended to read as follows:

"8-7-409. Orders of director.

(a) Upon finding that a release or a threatened release of hazardous substances may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment the director may, without notice or hearing, issue an order reciting the existence of such an imminent hazard and substantial endangerment and requiring that such action be taken as he determines necessary to protect the health and safety of any affected or threatened persons or the environment and to otherwise meet the emergency.

(b) The order of the director may include, but is not limited to, requiring any person responsible in whole or in part for the release or threatened release, or any person in total or partial control of the site, facility, or transport vehicle from which the release or threatened release emanates if that person has caused or contributed to the release or threatened release, to take such steps as are necessary to protect the public health and safety and the environment.

(c) A person shall not be deemed responsible for or to have caused or contributed to the release or threatened release of hazardous substances if such person merely provides financing or loans to another person or obtains title to property through foreclosure or through conveyance of property in total or partial satisfaction of a mortgage or other security interest in property.

(d) The orders may be issued verbally or in writing. If originally issued verbally, a written order will be issued by the director confirming the verbal order as soon as reasonably possible to do so.

(e) Any person to whom the order is directed shall comply therewith immediately but, upon written application to the director, shall be afforded a hearing and administrative review of the order within ten (10) days of making the application."

SECTION 4. Arkansas Code 8-7-508 (a) is hereby amended to read as follows:

8-7-508. Remedial authority of the department.

(a) (1) Upon finding that a hazardous substance site exists or may exist, the department may, upon reasonable notice and after opportunity for hearing, issue an order to any person liable for the site under 8-7-518, if that person has caused or contributed to the release or threatened release of hazardous substances at the site. This order shall require that such remedial actions be taken as are necessary to investigate, control, prevent, abate, treat, or contain any releases or threatened releases of hazardous substances from the site.

(2) A person shall not be deemed to have caused or contributed to the release or threatened release of hazardous substances if such person merely provides financing or loans to another person or obtains title to property through foreclosure or through conveyance of property in total or partial satisfaction of a mortgage or other security interest in property.

(3) The fact that such a site is or is not listed by the commission pursuant to 8-7-509(e) shall in no manner limit the authority of the department under this subchapter."

SECTION 5. Arkansas Code 8-7-403 (b) is amended to read:

"(b) As used in 8-7-413 - 8-7-415, unless the context otherwise requires, "responsible party" means:

(1) The owner or operator of a facility or site at which hazardous substances have been disposed and from which releases or threatened releases of hazardous substances occur;

(2) Any person who, at the time of disposal of a hazardous substance, owned or operated a facility or site from which releases or threatened releases of hazardous substances occur;

(3) Any generator of hazardous substances who causes a release or threatened release of hazardous substances or who, at the time of disposal, caused the substance to be disposed of at a facility or site from which releases or threatened releases of hazardous substances occur; or

(4) Any transporter of hazardous substances who causes a release or threatened release of such hazardous substances or who, at the time of disposal, selected the facility or site of disposal from which releases or threatened releases of the substances occur.

(5) Responsible party does not include (i) a person who merely provides financing or loans to a responsible party; (ii) a person who obtains title to property through foreclosure or through the conveyance of property in total or partial satisfaction of a mortgage or other security interest in property."

SECTION 6. Arkansas 8-7-307 is amended to read as follows:

"8-7-307. Unlawful actions.

(a) It shall be unlawful for any person:

(1) To violate any provision of this subchapter or of any rule, regulation, permit, or order issued under this subchapter;

(2) To transport hazardous wastes into or out of the state except as provided by regulations established by the department pursuant to the provisions of this subchapter;

(3) To dispose of hazardous wastes in the state except as provided

by regulations established by the department pursuant to this subchapter.

(b) No person shall be liable for any violation of any provision of this subchapter or of any rule, regulation, permit, or order issued under this subchapter, which was caused solely by the acts or omissions of a third party."

SECTION 7. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 8. All laws and parts of laws in conflict with this Act are hereby repealed.

APPROVED: March 1, 1989 Without the Governor's Signature

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