

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representative Wagner

A Bill

HOUSE BILL 1810

For An Act To Be Entitled

8 "AN ACT RELATING TO ENVIRONMENTAL REAL ESTATE CONCERNS;
9 REQUIRING REGULATIONS, REQUIREMENTS AND CERTIFICATION OF
10 ORGANIZATIONS THAT CERTIFY PERSONS TO PERFORM PHASE I
11 ENVIRONMENTAL INSPECTIONS/AUDITS/SITE ASSESSMENTS;
12 ESTABLISHES INNOCENT LANDOWNER LIABILITY EXCLUSIONS; AND
13 FOR OTHER PURPOSES."

Subtitle

16 "AN ACT RELATING TO ENVIRONMENTAL REAL
17 ESTATE CONCERNS."

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

21 SECTION 1. SHORT TITLE. This act may be cited as "The Environmental
22 Professionals Act".

24 SECTION 2. PURPOSE. It is the purpose and intent of this act to:

25 (A) Protect "innocent" parties, who have performed their due diligence
26 in a real estate transaction;

27 (B) Remove the environmental responsibility of persons who, in the
28 normal course of their business, should not be responsible for the action of
29 others such as, attorneys, real estate appraisers, real estate
30 brokers/salesmen, etc.;

31 (C) Establish guidelines for a Phase I Environmental Site Assessment;

32 (D) Define the term "Phase I Environmental Site Assessment";

33 (E) Establish guidelines for organizations which certify persons to
34 perform Phase I Environmental Site Assessments/Inspections/Audits and other
35 Environmental Professionals;

- 1 (F) Promote the private sector of "Environmental Professionals";
- 2 (G) Protect the consumer from persons in the environmental industry
- 3 who are not adequately knowledgeable or experienced; and
- 4 (H) Establish an Innocent Landowner's Liability Exclusion.

5

6 SECTION 3. FUNDING.

7 Funding for administration for the purposes of this act shall be from:

- 8 (A) Application fees from prospective training and certification
- 9 organizations and annual renewal fees from approved training and
- 10 certification organizations;

- 11 (B) Application fees and annual renewal fees for approved certified
- 12 environmental professionals.

13

14 SECTION 4. DEFINITIONS.

15 For the purpose of this act:

- 16 (1) "Approved Environmental Training and Certification Organization"
- 17 is defined as those organizations whose curriculum, program, training and
- 18 examination methods comply with the guidelines adopted or administered by the
- 19 board under this act and are in good standing with the requirements set forth
- 20 herein;

- 21 (2) "Board" is defined as the Arkansas Environmental Certification
- 22 Board;

- 23 (3) "Certified Phase I Environmental Professional" is defined as any
- 24 person receiving certification to perform Phase I Environmental Site
- 25 Assessments from an approved environmental training and certification
- 26 organization in accordance with this act;

- 27 (4) "Department" is defined as the Arkansas Department of Pollution
- 28 Control and Ecology;

- 29 (5) "Director" is defined as the Director of the Arkansas Department
- 30 of Pollution Control and Ecology;

- 31 (6) "Examination" is defined as a "closed book" written examination
- 32 given by an approved training and certification organization in a classroom
- 33 atmosphere;

- 34 (7) "Facility" is defined as the structures, real property and
- 35 improvements included on and a part of the subject's real estate;

1 (8) "Hazardous Substance" will have the same definition as defined at
2 A.C.A. § 8-7-503(8);

3 (9) "Hazardous Substance Sites" will have the same definition as
4 defined at A.C.A. § 8-7-503(12);

5 (10) "Hazardous Waste" will have the same definition as defined in
6 A.C.A. § 8-7-203(6);

7 (11) "Person or Persons" is defined as any individual, corporation,
8 company, firm, partnership, association, trust, joint-stock company or trust,
9 venture, state or federal government or agency, or any other legal entity,
10 however organized;

11 (12) "Phase I Environmental Site Assessment/Audit/Inspection" is
12 defined as the process by which a person or entity seeks to determine whether
13 a particular parcel of real property is subject to recognized environmental
14 conditions. These conditions indicate the presence or likely presence of a
15 hazardous substance or pollutant or contamination on a property under
16 conditions that indicate the existence of a release or threatened release at
17 the facility into structures on the property or into the ground, groundwater,
18 surface water or air of the subject property. A Phase I Assessment does not
19 include the testing of real property to determine if the property is an
20 environmental hazard. For the purpose of this act, audit, assessment and
21 inspection are considered the same;

22 (13) "Releases of hazardous substance" will have the same meaning as
23 found at A.C.A. § 8-7-503(7);

24 (14) "Remedial action" will have the same definition as defined at
25 A.C.A. § 8-7-503(10);

26 (15) "State" is defined as the state of Arkansas;

27 (16) "Subject Property" is defined as the real property and structures
28 that are being assessed for environmental problems;

29 (17) "Test or Testing" is defined as the laboratory testing of
30 material to determine if it contains any hazardous substance. The testing
31 must be conducted by a professional who has formal education/training in the
32 area being tested.

33

34 SECTION 5. ESTABLISHMENT OF THE ENVIRONMENTAL CERTIFICATION BOARD.

35 (A) Not later than sixty (60) days after the effective date of this

1 act, the Governor shall establish a certification and advisory board to be
2 known as the "Arkansas Environmental Certification Board".

3 (B) The board shall consist of a minimum of five (5) members of which
4 one (1) will be a representative from the Arkansas Department of Pollution
5 Control and Ecology, one will be a person who holds an active certified
6 general real estate appraiser license, one will be a Arkansas registered
7 professional engineer actively practicing in the environmental field, and two
8 at-large representatives.

9 (C) All members of the board shall serve on a voluntary basis, except
10 the member from the Arkansas Department of Pollution Control and Ecology.

11 (D) With the exception of the representative from the Arkansas
12 Department of Pollution Control and Ecology, three (3) members will be
13 appointed for three (3) years and two (2) members will be appointed for four
14 (4) years, for the purpose of keeping knowledgeable members on the board at
15 all times.

16 (E) The board will elect a member to serve as Chairman of the Board
17 who shall exercise the executive and administrative functions of the board.
18 The Chairman of the Board will not have a vote, except in case of a tie.

19 (F) No board member, agent, employee or officer of this board shall be
20 personally liable for any civil penalty with respect to any act or omission
21 within the scope of their official duties.

22 (G) All members of the board will be appointed by the Governor.

23

24 **SECTION 6. POWERS AND DUTIES OF THE BOARD.**

25 The board shall have the following powers and duties for the purposes
26 of implementing this act:

27 (A) To meet at a frequency as deemed appropriate by the board, to be
28 not less than once every six (6) months;

29 (B) Administer, and amend as necessary, guidelines for the
30 certification of environmental professionals, as established at Section 7 (A)
31 herein;

32 (C) Establish and administer guidelines for other classifications of
33 environmental professionals, such as:

34 (1) Hazardous Substance Site Characterization Specialist,

35 (2) Hazardous Substance Site Remediation Specialist,

1 (3) Solid Waste Specialist,

2 (4) Others as may be defined by the board;

3 (D) To revoke or suspend, for cause, the approval of an
4 organization/association to train and or certify Environmental Professionals;

5 (E) To revoke or suspend, for cause, the certification of a Certified
6 Environmental Professional;

7 (F) Maintain a State Registry of approved training and certification
8 organizations/associations;

9 (G) Maintain a State Registry of certified Environmental
10 Professionals;

11 (H) Any new or amended guidelines will be subject to notice and public
12 hearing prior to being adopted by the board;

13 (I) To hire sufficient staff to implement the purposes of this act
14 without infringement on the existing staff of the Arkansas Department of
15 Pollution Control and Ecology, with the exception of the board member
16 appointed from said agency; and

17 (J) Establish fees, following notice and hearing, that training and
18 certification organizations must remit to become and/or retain board
19 approval.

20

21 SECTION 7. GUIDELINES FOR THE CERTIFICATION OF ENVIRONMENTAL TRAINING
22 AND CERTIFICATION ORGANIZATIONS.

23 (A) The board will use the following minimum requirements for
24 approving organizations who train and certify persons to perform Phase I
25 Environmental Assessments in the state of Arkansas:

26 (1) Sixteen (16) classroom hours of environmental training with
27 a written exam;

28 (2) Six (6) classroom hours of annual continuing education;

29 (3) Environmental certification, renewal, and examination
30 procedures;

31 (4) Revocation and disciplinary procedures;

32 (5) A code of ethics;

33 (6) Consumer education procedures/program;

34 (7) Monthly reporting of all certification, revocation, and
35 disciplinary actions;

1 (8) Annual reporting of all program changes.

2 The board shall review and refine the above minimum requirements as
3 appropriate. Any changes to the above guidelines shall be preceded by notice
4 and public hearing.

5 (B) The board will consider the following in the development of
6 minimum requirements for the certification of other environmental
7 professionals as provided at Section 6 (C) above:

8 (1) Appropriate educational requirements;

9 (2) Appropriate requirements relating to duration and scope of
10 applicable experience;

11 (3) Type and duration of classroom curriculum for initial and/or
12 annual instruction;

13 (4) Written examination procedures;

14 (5) Other administrative matters.

15

16 SECTION 8. PHASE I ENVIRONMENTAL SITE ASSESSMENT.

17 The following are the minimum requirements for a Phase I Environmental
18 Site Assessments:

19 (A) The assessment must be conducted by a certified Phase I
20 Environmental Professional;

21 (B) Inclusion of interviews with past owners, present owners,
22 occupants of the property and neighbors for the purpose of gathering
23 information regarding the potential for contamination at the facility and its
24 real property;

25 (C) Inclusion of a review of historical sources, such as chain of
26 title documents, aerial photographs, building department records, and land
27 use records, to determine previous uses and occupancies of the real property
28 since it was first developed;

29 (D) Inclusion of a search for recorded environmental cleanup liens,
30 filed under federal, state or local laws, against the facility or its real
31 property;

32 (E) Inclusion of a review of federal, state and local government
33 storage tank records; and hazardous waste handling, generation, treatment,
34 disposal and spill records concerning contamination at or near the facility
35 or its real property;

1 (F) Inclusion of a visual inspection of the facility, its real
2 property and of the adjoining property;

3 (G) Inclusion of any specialized knowledge or experience on the part
4 of the client;

5 (H) The relationship of the purchase price to the value of the
6 property as if uncontaminated;

7 (I) Inclusion of all commonly known or reasonably ascertainable
8 information about the subject property and/or the adjoining properties;

9 (J) Inclusion of the obviousness or likely presence of contamination
10 at the subject property and the ability to detect such contamination by
11 appropriate investigation; and

12 (K) The board shall have the authority, after notice and hearing, to
13 amend these minimum requirements as to maintain equivalency with federal
14 requirements.

15

16 SECTION 9. TRANSITIONAL SCREENING / WALK-THROUGH ENVIRONMENTAL
17 INSPECTIONS / VACANT PARCELS OF LAND AND SINGLE FAMILY DWELLINGS.

18 In the case of single family dwellings and vacant parcels of land that
19 are not going to be developed and are purchased by a nongovernmental or
20 noncommercial entity, a site inspection and a review of state and federal
21 hazardous waste/substance site lists, and environmental regulatory agency
22 files that reveals no basis for further investigation will satisfy the
23 requirements of this inspection. However, this inspection must clearly state
24 that it is not a Phase I Environmental Site Assessment.

25

26 SECTION 10. NON RESPONSIBILITY OF UNINTERESTED PARTIES.

27 This act relieves any environmental responsibility and liability for
28 persons or entities that, in the normal course of their business, were hired
29 to assist in the sale or transfer of real property, such as attorneys, real
30 estate appraisers, real estate brokers/salesmen, etc. unless the persons or
31 entities:

32 (A) Were aware of an existing environmental hazard;

33 (B) Have an interest in the subject property;

34 (C) Were hired specifically to inspect or assess the subject property
35 for environmental conditions;

1 (D) Are not affiliated with any other person liable for response costs
2 at the real property, through any direct or indirect familial relationship,
3 or any contractual, corporate, or financial relationship other than that
4 created by the instruments by which title to the real property is conveyed or
5 financed;

6 (E) Were fully or partly responsible for past or existing
7 environmental hazards on the subject property.

8 SECTION 11. Arkansas Code 8-7-522 is hereby amended to add the
9 following:

10 "(d) A person shall not be liable for response costs hereunder who can
11 establish by a preponderance of the evidence that the release or threat of
12 release damages resulting therefrom were caused solely by:

13 (1) an act of God;

14 (2) an act of war;

15 (3) an act or omission of a third party other than an employee or
16 agent of the person, or those whose acts or omissions occur in connection
17 with a contractual relationship, existing directly or indirectly, with the
18 person (except where the sole contractual arrangement arises from a published
19 tariff and acceptance for carriage by a common carrier by rail), if the
20 person establishes by a preponderance of the evidence that:

21 (A) he exercised due care with respect to the hazardous
22 substance concerned, taking into consideration the characteristics of such
23 hazardous substance, in light of all relevant facts and circumstances; and

24 (B) he took precautions against foreseeable acts or
25 omissions of any such third party and the consequences that could foreseeably
26 result from such acts or omissions;

27 (4) any combination of the foregoing paragraphs.

28 (e) In consideration of a claim under paragraph (d) above the term
29 contractual relationship includes, but is not limited to, land contracts,
30 deeds or other instruments transferring title or possession, provided that
31 the real property on which the hazardous substance site is located was
32 acquired after the disposal of the hazardous substance and one or more of the
33 following circumstances is also established by a preponderance of the
34 evidence:

35 (1) At the time of acquisition the person did not know and had

1 no reason to know that any hazardous substance which is subject to a release
2 or threatened release was disposed of on, in or at the site;

3 (2) The person is a government entity which acquired the site by
4 escheat, or through any other involuntary transfer or acquisition or through
5 the exercise of eminent domain authority by purchase or condemnation;

6 (3) The person acquired the site by inheritance or behest.
7 In addition to the above the person claiming the above exclusion of liability
8 must establish that he has satisfied paragraph (d)(3)(A) and (B) above."
9

10 SECTION 12. RESPONSIBILITY OF BUYER/OWNER.

11 (a) In the event of a found past environmental problem, and if the
12 present owner meets all the requirements of A.C.A. § 8-7-522 (d) and (e) the
13 present owner will not be held responsible for said problem.

14 (b) This act does not require the buyer to have a Phase I
15 Environmental Site Assessment or a Walk-Through Environmental Inspection when
16 purchasing real property. However, in the event that no environmental
17 inquiry was made on said real property prior to the transfer, it is assumed
18 that the buyer is buying the subject property "as is" and that any past or
19 existing environmental problems were taken into consideration at the time of
20 the purchase and were adjusted in the sales price accordingly. Therefore,
21 the buyer will be responsible for any past or present environmental problem.

22 (c) Nothing in this act shall be construed to alter, limit, or exclude
23 liability of any person unless specifically provided for at A.C.A. § 8-7-522,
24 as amended.
25

26 SECTION 13. FEDERAL LIMITS.

27 The guidelines administered for Phase I Environmental Assessments
28 pursuant to this act shall not exceed federal regulations of Phase I
29 Environmental Site Assessments or Walk-Through Environmental Site
30 Inspections.
31

32 SECTION 14. RECIPROCATION AGREEMENT.

33 The state of Arkansas will reciprocate with all other states that meet
34 the minimum guidelines that are contained within this act, and future
35 guidelines or requirements of the board.

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2 SECTION 15. All provisions of this act of a general and permanent
3 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
4 Code Revision Commission shall incorporate the same in the Code.

5

6 SECTION 16. If any provision of this act or the application thereof to
7 any person or circumstance is held invalid, such invalidity shall not affect
8 other provisions or applications of the act which can be given effect without
9 the invalid provision or application, and to this end the provisions of this
10 act are declared to be severable.

11

12 SECTION 17. All laws and parts of laws in conflict with this act are
13 hereby repealed.