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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO HEALTH AND SAFETY --INDUSTRIAL PROPERTY REMEDIATION AND
REUSE ACT

Introduced By: Senators Lynch, and Walaska

Date Introduced: May 22, 2014

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 23-19.14-7 of the General Laws in Chapter 23-19.14 entitled
2 "Industrial Property Remediation and Reuse Act" is hereby amended to read as follows:

3 **23-19.14-7. Exemptions to liability.** -- The following parties are not responsible parties
4 and shall not be held liable for costs or damages associated with a release of hazardous material
5 and/or petroleum:

6 (1) Persons otherwise liable who can establish by a preponderance of the evidence that
7 the release or threat of release of a hazardous substance and the damages resulting from that
8 release or threat of release were caused solely by an act of God or an act of war;

9 (2) Bona fide prospective purchasers who have received:

10 (i) A remedial decision letter and are actively engaged in implementing the remedial
11 action approved therein; provided, that the remedial action is being diligently pursued to
12 completion in accordance with approved work schedules; or

13 (ii) A letter of compliance confirming successful completion of a remedial action
14 approved by the department; ~~or~~

15 (iii) An enforceable settlement agreement under section 23-19.14-10-; or

16 (iv) Correspondence from the department acknowledging that the person (or a tenant of a
17 person) acquired ownership of a facility after January 11, 2002 and that the person has certified to
18 each of the following criteria:

1 (A) All disposal at the facility took place before the person acquired the facility;

2 (B) The person made "all appropriate inquiry" into the prior uses and ownership of the
3 facility in accordance with generally accepted good commercial and customary standards and
4 practices;

5 (C) The person will provide all legally required notices for any discovery or release of
6 hazardous substances at the facility;

7 (D) The person will exercise appropriate care to stop ongoing releases, prevent threatened
8 future releases and prevent or limit human, environmental or natural resource exposure to any
9 previously released hazardous substance;

10 (E) The person will provide cooperation, assistance and access to those performing
11 remedial work at a facility;

12 (F) The person will comply with and will not impede the effectiveness or integrity of any
13 institutional controls at a facility; and

14 (G) The person has no affiliation with any responsible party and was not created through
15 a reorganization of a business entity that was a responsible party.

16 (3) Persons who maintain an indicia of ownership solely to protect a secured interest in
17 land and are not operators;

18 (4) Persons who are not operators and who act solely as custodial receivers or who can
19 establish by a preponderance of evidence that they are an innocent landowner and the release or
20 threat of release were caused solely by an act or omission of a third party other than an employer
21 or agent of the defendant, or whose act or omission occurs in connection with a contractual
22 relationship, existing directly or indirectly, with the defendant if the defendant establishes:

23 (i) He or she exercised due diligence in the acquisition of the site at the time of purchase
24 and exercised due care with respect to the hazardous material and/or petroleum concerned, taking
25 into consideration the characteristics of the hazardous material, in light of the facts and
26 circumstances; and

27 (ii) He or she took precautions against foreseeable acts, or omissions of any third party
28 and the consequences that could foreseeably result from those acts or omissions;

29 (5) A unit of state or local government which acquired ownership or control
30 involuntarily through bankruptcy, tax delinquency, abandonment or other circumstances in which
31 the government involuntarily acquires title by virtue of its function as sovereign; provided,
32 however, that the unit of state or local government did not cause or contribute to the release or
33 threatened release of a hazardous material at the site; and

34 (6) (i) A person that owns real property that is contiguous to or otherwise similarly

1 situated with respect to, and that is or may be contaminated by a release or threatened release of a
2 hazardous material from, real property that is not owned by that person shall not be considered to
3 be a responsible party for the site solely by reason of the contamination if:

4 (A) The person did not cause, contribute, or consent to the release or threatened release;

5 (B) The person is not:

6 (I) Potentially liable, or affiliated with any other person that is potentially liable, for
7 response costs at the site through any direct or indirect familial relationship or any contractual,
8 corporate, or financial relationship (other than a contractual, corporate, or financial relationship
9 that is created by a contract for the sale of goods or services); or

10 (II) The result of a reorganization of a business entity that was potentially liable;

11 (C) The person takes reasonable steps to:

12 (I) Stop any continuing release;

13 (II) Prevent any threatened future release; and

14 (III) Prevent or limit human, environmental, or natural resource exposure to any
15 hazardous substance released on or from property owned by that person;

16 (D) The person provides full cooperation, assistance, and access to persons that are
17 authorized to conduct response actions or natural resource restoration at the site from which there
18 has been a release or threatened release (including the cooperation and access necessary for the
19 installation, integrity, operation, and maintenance of any complete or partial response action or
20 natural resource restoration at the site);

21 (E) The person:

22 (I) Is in compliance with any land use restrictions established or relied on in connection
23 with the response action at the site; and

24 (II) Does not impede the effectiveness or integrity of any institutional control employed
25 in connection with a response action; and

26 (F) The person provides all legally required notices with respect to the discovery or
27 release of any hazardous substances at the facility.

28 (ii) To qualify as a person described in this subdivision, a person must establish by a
29 preponderance of the evidence that the conditions in subparagraphs (i)(A) through (i)(F) of this
30 subdivision have been met.

31 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY --INDUSTRIAL PROPERTY REMEDIATION AND
REUSE ACT

1 This act would provide an exemption for certain so-called "innocent tenants" and
2 property owners of industrial property from liability for costs or damages associated with a
3 release of hazardous materials or petroleum from the property. The innocent tenant or property
4 owner would need to meet certain requirements in order to qualify for this exemption.

5 This act would take effect upon passage.

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