

By Mr. Kennedy of Brockton, petition of the Associated Industries of Massachusetts, Thomas P. Kennedy, Edward B. Teague III, Steven Angelo, Robert A. Durand, John H. Rogers and Michael R. Knapik for legislation to provide incentives for compliance with certain environmental laws of the Commonwealth. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

AN ACT RELATIVE TO ENVIRONMENTAL COMPLIANCE INCENTIVES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of chapter 21E of the General Laws, as
2 appearing in the 1992 Official Edition, is hereby amended by adding
3 at the end thereof the following new paragraph:—

4 Any person, company, or other organization, public or private,
5 who voluntarily provides goods, services, materials, equipment,
6 facilities or personnel for emergency response or other hazardous
7 material response planning and training, or during an actual or
8 impending emergency shall be immune from civil liability, unless
9 such person, company or other organization acts with malicious pur-
10 pose or in a manner exhibiting wanton and willful disregard of
11 human rights, safety, health or property in providing such goods,
12 services, materials, equipment, facilities or personnel.

1 SECTION 2. It is the intent of this Section to encourage persons
2 engaged in activities regulated under any statute, regulation, by-law
3 or ordinance of the Commonwealth, its authorities, any city or town,
4 any county, or any other governmental agency, to conduct voluntary
5 environmental audits to assess, to meet and to surpass applicable
6 environmental protection requirements. Therefore, section 19F of
7 Chapter 21A of the General Laws, as appearing in the 1992 Official
8 Edition is hereby amended by adding at the end thereof the
9 following new paragraphs:—

10 Section 19F½. (a) Except as otherwise provided in this Act, the
11 proceedings, reports, and records of a voluntary environmental audit
12 shall be confidential and shall not be subject to subpoena or dis-
13 covery, or introduced into evidence in any judicial or administrative
14 proceeding, and no person who participated in a voluntary environ-
15 mental audit shall be permitted or required to testify in any judicial
16 or administrative proceeding with respect to any findings, recom-
17 mendations, evaluations, opinions, deliberations or other actions that
18 comprised or resulted from a voluntary environmental audit.

19 (b) Documents, data, reports or records existing independently of
20 a voluntary environmental audit shall not be immune from sub-
21 poena, discovery or use in any judicial or administrative proceeding
22 merely because they were used in a voluntary environmental audit
23 or included within a report of a voluntary environmental audit. Any
24 person who participated in a voluntary environmental audit may be
25 permitted or required to testify in any judicial or administrative pro-
26 ceeding concerning such independent documents, data, reports or
27 records.

28 (c) The qualified immunity for a voluntary environmental audit
29 may not be waived expressly or implicitly by a person conducting
30 activities subject to applicable environmental protection require-
31 ments or by agents or independent contractors of the regulated
32 person.

33 (d) The qualified immunity described in Section (a) shall not
34 extend to:

35 (i) Documents, communications, data, reports, or other informa-
36 tion required to be collected, developed, maintained, reported or
37 otherwise made available to a regulatory agency or to the public
38 under any statute, regulation, by-law or ordinance of the
39 Commonwealth, its authorities, any city or town, any county, or any
40 other governmental agency.

41 (ii) Information obtained by observation, sampling or monitoring
42 by any regulatory agency; or

43 (iii) Information obtained from a source independent of the
44 voluntary environmental audit.

45 (e) DEFINITIONS:

46 (i) "Voluntary environmental audit" means a voluntary evaluation
47 of one or more facilities or activities regulated under the environ-
48 mental protection laws, regulations, by-laws, or ordinances in
49 the Commonwealth that is designed to identify and to prevent non-

50 compliance and improve compliance with any statute, regulation,
51 by-law, or ordinance of the Commonwealth, its authorities, any city
52 or town, any county, or any other governmental agency concerning
53 environmental protection, or is designed to seek ways to achieve
54 environmental goals that go beyond mere compliance, where such
55 evaluation is performed by an Environmental Auditor.

56 (ii) "Environmental auditor" means a person, including an indi-
57 vidual or a firm, who conducts audits for environmental compliance,
58 and may include specially designated employees of the person sub-
59 ject to audit.

1 SECTION 3. Section 85 of Chapter 231 of the General Laws, as
2 appearing in the 1992 Official Edition, is hereby amended by adding
3 after section 85(W) the following new paragraph:—

4 Section 85W½. (a) Any person, company, or other organization,
5 public or private who voluntarily provides services, materials,
6 equipment, facilities or personnel for planning, training or partici-
7 pating in a non-profit business-to-business networking organization
8 shall be immune from civil liability when providing consultative
9 services to a third party through such a non-profit business-to-
10 business networking partnership unless such person, company or
11 other organization acts with criminal negligence in providing such
12 services, materials, equipment, facilities or personnel.

13 (b) Any non-profit association, or any non-profit business-to-
14 business networking organization, or employee of such organiza-
15 tions, that provides consultative services on either a no-cost basis or
16 as a general benefit of yearly membership in the association shall be
17 immune from civil liability when providing such services unless the
18 employee or the organization acts with criminal negligence.

19 (c) Under this section a non-profit association, and a nonprofit
20 business-to-business networking organization are defined as those
21 organizations that qualify, under the Internal Revenue Code,
22 Section 501 (c), as non-profit organizations.

