

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

282J0596

HOUSE ENGROSSED NO. **HB 1157** - 02/06/2004

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Cutler, Madsen, Michels, and O'Brien and Senators Bogue, Earley, McCracken, Olson (Ed), and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide a limitation of lender environmental liability for
2 cleanup and remediation costs if providing financing for a site participating in a brownfields
3 revitalization and economic development program.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 34A-15 be amended by adding thereto a NEW SECTION to read
6 as follows:

7 Notwithstanding the provisions of § 34A-15-6, a lender-owner is not liable for
8 environmental, response, cleanup, or remediation costs at a brownfields site approved by the
9 Department of Environment and Natural Resources for participation in the state brownfields
10 revitalization and economic development program unless:

11 (1) The lender-owner, its employees, or agents directly cause an immediate release or
12 directly exacerbate a release of the regulated substances on or from the property or
13 directly violate any environmental statute or regulation; or

14 (2) The lender-owner, its employees, or agents knowingly and willfully compelled the
15 borrower to:



1 (a) Perform an action that caused an immediate release of regulated substances in
2 excess of reportable quantities; or

3 (b) Violate any environmental statute or regulation.

4 Liability pursuant to this section is limited to the cost for a response action or remediation
5 that is directly attributable to the lender-owner's activities set forth in subdivisions (1) and (2)
6 of this section. Liability arises only if the lender-owner's actions were the proximate cause of
7 the release or violation. Ownership or control of the property pursuant to a security interest
8 during or after foreclosure does not by itself result in liability. No lender-owner is liable for any
9 response action or remediation if the response action or remediation arises solely from a release
10 of regulated substances in excess of reportable quantities that occurred before or commences
11 before and continues after foreclosure. However, the lender-owner is responsible for the portion
12 of the response action or remediation that is directly attributable to the lender-owner's
13 aggravation of a release. A release of regulated substances in excess of reportable quantities
14 discovered in the course of conducting environmental due diligence is presumed to be a prior
15 or continuing release on the property.