

AN ACT

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

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

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

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

- (1) The lender-owner, its employees, or agents directly cause an immediate release or directly exacerbate a release of the regulated substances on or from the property or directly violate any environmental statute or regulation; or
- (2) The lender-owner, its employees, or agents knowingly and willfully compelled the borrower to:
 - (a) Perform an action that caused an immediate release of regulated substances in excess of reportable quantities; or
 - (b) Violate any environmental statute or regulation.

Liability pursuant to this section is limited to the cost for a response action or remediation that is directly attributable to the lender-owner's activities set forth in subdivisions (1) and (2) of this section. Liability arises only if the lender-owner's actions were the proximate cause of the release or violation. Ownership or control of the property pursuant to a security interest during or after foreclosure does not by itself result in liability. No lender-owner is liable for any response action or

remediation if the response action or remediation arises solely from a release of regulated substances in excess of reportable quantities that occurred before or commences before and continues after foreclosure. However, the lender-owner is responsible for the portion of the response action or remediation that is directly attributable to the lender-owner's aggravation of a release. A release of regulated substances in excess of reportable quantities discovered in the course of conducting environmental due diligence is presumed to be a prior or continuing release on the property.

An Act to provide a limitation of lender environmental liability for cleanup and remediation costs if providing financing for a site participating in a brownfields revitalization and economic development program.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1157

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1157
File No. _____
Chapter No. _____

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Received at this Executive Office this ____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20__

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State