

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

282J0596

HOUSE BILL NO. 1157

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.

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

4 Section 1. That § 34A-15-6 be amended to read as follows:

5 34A-15-6. ~~Sections 34A-15-3 to 34A-15-5, inclusive, do not affect any liability expressly~~
6 ~~created under federal or state health or environmental statutes, regulations, rules, permits, or~~
7 ~~orders.~~ A lender-owner is not liable for environmental cleanup or remediation costs unless:

8 (1) The lender-owner, its employees, or agents directly cause an immediate release or
9 directly exacerbate a release of the regulated substances on or from the property; or

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

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

14 (b) Violate any environmental statute or regulation.

15 Liability pursuant to this section is limited to the cost for a response action or remediation



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