

(p. 375) 2/22/94 Environment
(p. 835) 3-24-94 Senate - Do Pass

HOUSE FILE 2118
BY COMMITTEE ON ENERGY AND
ENVIRONMENTAL PROTECTION

FEB 9 1994

Place On Calendar

(SUCCESSOR TO HSB 532)

Passed House, ^(p. 302) Date 2-17-94 Passed Senate, ^(p. 1057) Date 4-6-94
Vote: Ayes 92 Nays 2 Vote: Ayes 47 Nays 0
Approved April 13, 1994

A BILL FOR

1 An Act relating to underground storage tank lender liability.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF=2118

1 Section 1. Section 455B.471, subsection 6, paragraph b,
2 Code Supplement 1993, is amended to read as follows:

3 b. "owner" To the extent consistent with the federal
4 Resource Conservation and Recovery Act, as amended to January
5 1, 1994, 42 U.S.C. § 6901 et seq., "owner" does not include a
6 person who holds indicia of ownership in the underground
7 storage tank or the tank site property if all of the following
8 apply:

9 (1) The person holds indicia of ownership primarily to
10 protect that person's security interest in the underground
11 storage tank or tank site property, where such indicia of
12 ownership was acquired either for the purpose of securing
13 payment of a loan or other indebtedness, or in the course of
14 protecting the security interest. The term "primarily to
15 protect that person's security interest" includes but is not
16 limited to ownership interests acquired as a consequence of
17 that person exercising rights as a security interest holder in
18 the underground storage tank or tank site property, where such
19 exercise is necessary or appropriate to protect the security
20 interest, to preserve the value of the collateral, or to
21 recover a loan or indebtedness secured by such interest. The
22 person holding indicia of ownership in the underground storage
23 tank or tank site property and who acquires title or a right
24 to title to such underground storage tank or tank site
25 property upon default under the security arrangement, or at,
26 or in lieu of, foreclosure, shall continue to hold such
27 indicia of ownership primarily to protect that person's
28 security interest so long as subsequent actions taken by that
29 person with respect to the underground storage tank or tank
30 site property are intended to protect the collateral secured
31 by the interest, and demonstrate that the person is seeking to
32 sell or liquidate the secured property rather than holding the
33 property for investment purposes.

34 (2) The person does not exhibit managerial control of, or
35 managerial responsibility for, the daily operation of the

1 underground storage tank or tank site property through the
2 actual, direct, and continual or recurrent exercise of
3 managerial control over the underground storage tank or tank
4 site property in which that person holds a security interest,
5 which managerial control materially divests the borrower,
6 debtor, owner or operator of the underground storage tank or
7 tank site property of such control.

8 (3) The person has taken no subsequent action with respect
9 to the site which causes or exacerbates a release or
10 threatened release of a hazardous substance.

11 EXPLANATION

12 This bill limits the underground storage tank lender
13 liability exemptions by stating that the definition of those
14 persons who are not considered "owners" for purposes of
15 corrective action liability must be consistent with the
16 federal Resource Conservation and Recovery Act, as amended to
17 January 1, 1994.

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HSB 532

ENERGY AND ENVIRONMENTAL PROTECTION

HOUSE FILE 218
BY (PROPOSED COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION BILL BY CHAIRPERSON RAFFERTY)

Greig, Chair
Gries
Holveck

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

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1 Section 1. Section 455B.471, subsection 6, paragraph b,
2 Code Supplement 1993, is amended to read as follows:

3 b. "Owner" To the extent consistent with federal law,
4 "owner" does not include a person who holds indicia of
5 ownership in the underground storage tank or the tank site
6 property if all of the following apply:

7 (1) The person holds indicia of ownership primarily to
8 protect that person's security interest in the underground
9 storage tank or tank site property, where such indicia of
10 ownership was acquired either for the purpose of securing
11 payment of a loan or other indebtedness, or in the course of
12 protecting the security interest. The term "primarily to
13 protect that person's security interest" includes but is not
14 limited to ownership interests acquired as a consequence of
15 that person exercising rights as a security interest holder in
16 the underground storage tank or tank site property, where such
17 exercise is necessary or appropriate to protect the security
18 interest, to preserve the value of the collateral, or to
19 recover a loan or indebtedness secured by such interest. The
20 person holding indicia of ownership in the underground storage
21 tank or tank site property and who acquires title or a right
22 to title to such underground storage tank or tank site
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24 or in lieu of, foreclosure, shall continue to hold such
25 indicia of ownership primarily to protect that person's
26 security interest so long as subsequent actions taken by that
27 person with respect to the underground storage tank or tank
28 site property are intended to protect the collateral secured
29 by the interest, and demonstrate that the person is seeking to
30 sell or liquidate the secured property rather than holding the
31 property for investment purposes.

32 (2) The person does not exhibit managerial control of, or
33 managerial responsibility for, the daily operation of the
34 underground storage tank or tank site property through the
35 actual, direct, and continual or recurrent exercise of

1 managerial control over the underground storage tank or tank
2 site property in which that person holds a security interest,
3 which managerial control materially divests the borrower,
4 debtor, owner or operator of the underground storage tank or
5 tank site property of such control.

6 (3) The person has taken no subsequent action with respect
7 to the site which causes or exacerbates a release or
8 threatened release of a hazardous substance.

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EXPLANATION

10 This bill limits the underground storage tank lender
11 liability exemptions by stating that the definition of those
12 persons who are not considered "owners" for purposes of
13 corrective action liability must be consistent with federal
14 law.

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HOUSE FILE 2118

AN ACT

RELATING TO UNDERGROUND STORAGE TANK LENDER LIABILITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 455B.471, subsection 6, paragraph b, Code Supplement 1993, is amended to read as follows:

b. "Owner" To the extent consistent with the federal Resource Conservation and Recovery Act, as amended to January 1, 1994, 42 U.S.C. § 6901 et seq., "owner" does not include a person who holds indicia of ownership in the underground storage tank or the tank site property if all of the following apply:

(1) The person holds indicia of ownership primarily to protect that person's security interest in the underground storage tank or tank site property, where such indicia of ownership was acquired either for the purpose of securing payment of a loan or other indebtedness, or in the course of protecting the security interest. The term "primarily to protect that person's security interest" includes but is not limited to ownership interests acquired as a consequence of that person exercising rights as a security interest holder in the underground storage tank or tank site property, where such exercise is necessary or appropriate to protect the security interest, to preserve the value of the collateral, or to recover a loan or indebtedness secured by such interest. The person holding indicia of ownership in the underground storage tank or tank site property and who acquires title or a right to title to such underground storage tank or tank site property upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue to hold such indicia of ownership primarily to protect that person's security interest so long as subsequent actions taken by that person with respect to the underground storage tank or tank site property are intended to protect the collateral secured by the interest, and demonstrate that the person is seeking to sell or liquidate the secured property rather than holding the property for investment purposes.

(2) The person does not exhibit managerial control of, or managerial responsibility for, the daily operation of the underground storage tank or tank site property through the actual, direct, and continual or recurrent exercise of managerial control over the underground storage tank or tank site property in which that person holds a security interest, which managerial control materially divests the borrower, debtor, owner or operator of the underground storage tank or tank site property of such control.

(3) The person has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

HAROLD VAN MAANEN
Speaker of the House

LEONARD L. BOSWELL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2118, Seventy-fifth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved April 13, 1994

TERRY E. BRANSTAD
Governor