

MAR 24 1993

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HOUSE FILE 645
BY COMMITTEE ON ENERGY AND
ENVIRONMENTAL PROTECTION

(SUCCESSOR TO HSB 155)

Passed House, ^(P. 1061) Date 4-5-93 Passed Senate, Date _____
Vote: Ayes 95 Nays 5 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to exemptions from liability for environmental
2 contamination and providing for a state lien on the property.

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

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HF 645

1 Section 1. Section 455B.171, subsection 11, Code 1993, is
2 amended by adding the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. For the purpose of imposing
4 liability for violation of a section of this part, or a rule
5 or regulation adopted by the department of natural resources
6 under this part, "person" does not include a person who holds
7 indicia of ownership in contaminated property from which
8 prohibited discharges, deposits, or releases of pollutants
9 into any water of the state have been or are evidenced, if the
10 person has satisfied the requirements of section 455B.381,
11 subsection 7, unnumbered paragraph 2, with respect to the
12 contaminated property, regardless of whether the department
13 has determined that the contaminated property constitutes a
14 hazardous condition site.

15 Sec. 2. Section 455B.381, subsection 7, Code 1993, is
16 amended by adding the following new unnumbered paragraph:

17 NEW UNNUMBERED PARAGRAPH. "Person having control over a
18 hazardous substance" does not include a person who holds
19 indicia of ownership in a hazardous condition site, if the
20 person satisfies both of the following:

21 a. Holds indicia of ownership primarily to protect that
22 person's security interest in the hazardous condition site,
23 where the indicia of ownership was acquired either for the
24 purpose of securing payment of a loan or other indebtedness,
25 or in the course of protecting the security interest. The
26 term "primarily to protect that person's security interest"
27 includes, but is not limited to, ownership interests acquired
28 as a consequence of that person exercising rights as a
29 security interest holder in the hazardous condition site,
30 where the exercise is necessary or appropriate to protect the
31 security interest, to preserve the value of the collateral, or
32 to recover a loan or indebtedness secured by the interest.
33 The person holding indicia of ownership in a hazardous
34 condition site and who acquires title or a right to title to
35 the site upon default under the security arrangement, or at,

1 or in lieu of, foreclosure, shall continue to hold the indicia
2 of ownership primarily to protect that person's security
3 interest so long as the subsequent actions of the person with
4 respect to the site are intended to protect the collateral
5 secured by the interest, and demonstrate that the person is
6 seeking to sell or liquidate the secured property rather than
7 holding the property for investment purposes.

8 b. Does not exhibit managerial control of, or managerial
9 responsibility for, the daily operation of the hazardous
10 condition site through the actual, direct, and continual or
11 recurrent exercise of managerial control over the hazardous
12 condition site in which that person holds a security interest,
13 which managerial control materially divests the borrower,
14 debtor, or obligor of control.

15 Sec. 3. Section 455B.392, Code 1993, is amended by adding
16 the following new subsection:

17 NEW SUBSECTION. 7. a. There is no liability under this
18 section for a person who has satisfied the requirements of
19 section 455B.381, subsection 7, unnumbered paragraph 2,
20 regardless of when that person acquired title or right to
21 title to the hazardous condition site, except that a person
22 otherwise exempt from liability under this subsection shall be
23 liable to the state for the lesser of:

24 (1) The total reasonable cleanup costs incurred by the
25 state to cleanup a hazardous substance at the hazardous
26 condition site; or

27 (2) The amount representing the postcleanup fair market
28 value of the property comprising the hazardous condition site.

29 b. Liability under this subsection shall only be imposed
30 when the person holds title to the hazardous condition site at
31 the time the state incurs reasonable cleanup costs.

32 c. For purposes of this subsection, "postcleanup fair
33 market value" means the actual amount of consideration

34 received by such person upon sale or transfer of the hazardous
35 condition site which has been cleaned up by the state to a

1 bona fide purchaser for value.

2 d. Cleanup expenses incurred by the state shall be a lien
3 upon the real estate constituting the hazardous condition
4 site, recordable and collectable in the same manner as
5 provided for in section 424.11, subject to the terms of this
6 subsection. The lien of the state shall be prior and superior
7 to any other lien interests in the real estate constituting
8 the hazardous condition site except lien interests held by the
9 state or the federal government. The lien shall attach at the
10 time the state incurs expenses to clean up the hazardous
11 condition site. The lien shall be valid as against subsequent
12 mortgagees, purchasers, or judgment creditors, for value and
13 without notice of the lien, only when a notice of the lien is
14 filed with the recorder of the county in which the property is
15 located. Upon payment by the person to the state, of the
16 amount specified in this subsection, the state shall release
17 the lien. If no lien has been recorded at the time the person
18 sells or transfers the property, then the person shall not be
19 liable for any cleanup costs incurred by the state.

20 Sec. 4. Section 455B.418, Code 1993, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 4. For the purpose of determining
23 violations under this section and section 455B.417, the term
24 "person" does not include a person who holds indicia of
25 ownership in the hazardous waste or hazardous substance
26 disposal site which contains a hazardous waste or hazardous
27 substance, or where hazardous substances or wastes are
28 treated, stored, or disposed of, if such person has satisfied
29 the requirements of section 455B.381, subsection 7, unnumbered
30 paragraph 2, with respect to the disposal site, whether or not
31 the director has determined that such disposal site
32 constitutes a hazardous condition site.

33 Sec. 5. Section 455B.471, subsection 6, unnumbered
34 paragraph 2, Code 1993, is amended by striking the unnumbered
35 paragraph and inserting in lieu thereof the following:

1 "Owner" does not include a person who holds indicia of
2 ownership in the underground storage tank or the tank site
3 property if both of the following apply:

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

29 (b) The person does not exhibit managerial control of, or
30 managerial responsibility for, the daily operation of the
31 underground storage tank or tank site property through the
32 actual, direct, and continual or recurrent exercise of
33 managerial control over the underground storage tank or tank
34 site property in which that person holds a security interest,
35 which managerial control materially divests the borrower,

1 debtor, owner or operator of the underground storage tank or
2 tank site property of such control.

3 EXPLANATION

4 This bill excludes from the definition of "persons having
5 control over a hazardous substance" persons who hold indicia
6 of ownership primarily to protect the persons security
7 interest and who do not exhibit managerial control over the
8 property on which a hazardous condition is located. The bill
9 later cites this definition to exclude persons who merely hold
10 indicia of ownership and do not exhibit managerial control
11 over property upon which water quality violations under part 1
12 of Division III of chapter 455B have occurred and property
13 which has been contaminated from an underground storage tank.
14 It specifically addresses liability for these persons for
15 hazardous conditions in which the state has expended funds to
16 clean the property and creates a state lien for these persons
17 in the amount of the cleanup.

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HOUSE FILE 645

H-3582

- 1 Amend House File 645 as follows:
2 1. Page 2, line 7, by inserting after the word
3 "purposes." the following: "A person who takes
4 subsequent action with respect to the site which was
5 intended to protect the collateral and causes or
6 exacerbates a release or threatened release of a
7 hazardous substance, shall be liable for the costs to
8 respond to the release or threatened release, to the
9 extent that the release or threatened release is
10 attributable to the person's actions."
11 2. Page 5, by inserting after line 2 the
12 following:
13 "Sec. ____ . EFFECTIVE DATE. This Act, being deemed
14 of immediate importance, takes effect upon enactment."
15 3. Title page, line 2, by inserting after the
16 word "property" the following: "and providing an
17 effective date".
18 4. By renumbering as necessary.

By RAFFERTY of Scott

H-3582 FILED MARCH 30, 1993

WITHDRAWN
4-5-93

HOUSE FILE 645

H-3677

- 1 Amend House File 645 as follows:
2 1. Page 3, by striking lines 6 through 9 and
3 inserting the following: "subsection. The lien shall
4 attach at the".
adopted 4-5-93 (R1047)
By RAFFERTY of Scott

H-3677 FILED APRIL 2, 1993

HOUSE FILE 645

H-3708

- 1 Amend House File 645 as follows:
2 1. Page 1, line 20, by striking the word "both"
3 and inserting the following: "all".
4 2. Page 2, by inserting after line 14 the
5 following:
6 "c. Has taken no subsequent action with respect to
7 the site which causes or exacerbates a release or
8 threatened release of a hazardous substance."
9 3. Page 4, line 3, by striking the word "both"
10 and inserting the following: "all".
11 4. Page 5, by inserting after line 2 the
12 following:
13 "(c) The person has taken no subsequent action
14 with respect to the site which causes or exacerbates a
15 release or threatened release of a hazardous
16 substance.
17 Sec. ____ . EFFECTIVE DATE. This Act, being deemed
18 of immediate importance, takes effect upon enactment."
19 5. Title page, line 2, by inserting after the
20 word "property" the following: "and providing an
21 effective date".
22 6. By renumbering as necessary.

By RAFFERTY of Scott

H-3708 FILED APRIL 5, 1993

ADOPTED

HOUSE FILE 645
FISCAL NOTE

A fiscal note for House File 645 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 645 protects persons who hold only a security interest in a contaminated property from liability, under State law, for the contamination.

The bill also creates a State lien to be attached to property on which the State has expended funds to remediate environmentally hazardous conditions. The lien is superior to all liens with the exception of State and federal liens.

Fiscal Impact:

A reasonable estimate as to the fiscal impact of the exemption from liability and the lien provisions cannot be determined. However, the exemption from liability for persons holding security interest would increase the amount of contaminated property for which the only source of cleanup funds is the State and its local governments. The lien provisions should increase the State's ability to recover funds expended by the State for contaminated property remediation.

(LSB 1960hv, JWR)

FILED APRIL 2, 1993

BY DENNIS PROUTY, FISCAL DIRECTOR

4-6-93 Senate - Environ. & Energy
7-8-93 Senate - Do Pass

HOUSE FILE 645
BY COMMITTEE ON ENERGY AND
ENVIRONMENTAL PROTECTION

(SUCCESSOR TO HSB 155)

(As Amended and Passed by the House April 5, 1993)

Passed House, Date _____ Passed Senate, Date 4/19/93
Vote: Ayes _____ Nays _____ Vote: Ayes 46 Nays 0
Approved April 26, 1993

A BILL FOR

1 An Act relating to exemptions from liability for environmental
2 contamination and providing for a state lien on the property
3 and providing an effective date.

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

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House Amendments _____

1 Section 1. Section 455B.171, subsection 11, Code 1993, is
2 amended by adding the following new unnumbered paragraph:
3 NEW UNNUMBERED PARAGRAPH. For the purpose of imposing
4 liability for violation of a section of this part, or a rule
5 or regulation adopted by the department of natural resources
6 under this part, "person" does not include a person who holds
7 indicia of ownership in contaminated property from which
8 prohibited discharges, deposits, or releases of pollutants
9 into any water of the state have been or are evidenced, if the
10 person has satisfied the requirements of section 455B.381,
11 subsection 7, unnumbered paragraph 2, with respect to the
12 contaminated property, regardless of whether the department
13 has determined that the contaminated property constitutes a
14 hazardous condition site.

15 Sec. 2. Section 455B.381, subsection 7, Code 1993, is
16 amended by adding the following new unnumbered paragraph:
17 NEW UNNUMBERED PARAGRAPH. "Person having control over a
18 hazardous substance" does not include a person who holds
19 indicia of ownership in a hazardous condition site, if the
20 person satisfies all of the following:

21 a. Holds indicia of ownership primarily to protect that
22 person's security interest in the hazardous condition site,
23 where the indicia of ownership was acquired either for the
24 purpose of securing payment of a loan or other indebtedness,
25 or in the course of protecting the security interest. The
26 term "primarily to protect that person's security interest"
27 includes, but is not limited to, ownership interests acquired
28 as a consequence of that person exercising rights as a
29 security interest holder in the hazardous condition site,
30 where the exercise is necessary or appropriate to protect the
31 security interest, to preserve the value of the collateral, or
32 to recover a loan or indebtedness secured by the interest.
33 The person holding indicia of ownership in a hazardous
34 condition site and who acquires title or a right to title to
35 the site upon default under the security arrangement, or at,

1 or in lieu of, foreclosure, shall continue to hold the indicia
2 of ownership primarily to protect that person's security
3 interest so long as the subsequent actions of the person with
4 respect to the site are intended to protect the collateral
5 secured by the interest, and demonstrate that the person is
6 seeking to sell or liquidate the secured property rather than
7 holding the property for investment purposes.

8 b. Does not exhibit managerial control of, or managerial
9 responsibility for, the daily operation of the hazardous
10 condition site through the actual, direct, and continual or
11 recurrent exercise of managerial control over the hazardous
12 condition site in which that person holds a security interest,
13 which managerial control materially divests the borrower,
14 debtor, or obligor of control.

15 c. Has taken no subsequent action with respect to the site
16 which causes or exacerbates a release or threatened release of
17 a hazardous substance.

18 Sec. 3. Section 455B.392, Code 1993, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 7. a. There is no liability under this
21 section for a person who has satisfied the requirements of
22 section 455B.381, subsection 7, unnumbered paragraph 2,
23 regardless of when that person acquired title or right to
24 title to the hazardous condition site, except that a person
25 otherwise exempt from liability under this subsection shall be
26 liable to the state for the lesser of:

27 (1) The total reasonable cleanup costs incurred by the
28 state to cleanup a hazardous substance at the hazardous
29 condition site; or

30 (2) The amount representing the postcleanup fair market
31 value of the property comprising the hazardous condition site.

32 b. Liability under this subsection shall only be imposed
33 when the person holds title to the hazardous condition site at
34 the time the state incurs reasonable cleanup costs.

35 c. For purposes of this subsection, "postcleanup fair

1 market value" means the actual amount of consideration
2 received by such person upon sale or transfer of the hazardous
3 condition site which has been cleaned up by the state to a
4 bona fide purchaser for value.

5 d. Cleanup expenses incurred by the state shall be a lien
6 upon the real estate constituting the hazardous condition
7 site, recordable and collectable in the same manner as
8 provided for in section 424.11, subject to the terms of this
9 subsection. The lien shall attach at the time the state
10 incurs expenses to clean up the hazardous condition site. The
11 lien shall be valid as against subsequent mortgagees,
12 purchasers, or judgment creditors, for value and without
13 notice of the lien, only when a notice of the lien is filed
14 with the recorder of the county in which the property is
15 located. Upon payment by the person to the state, of the
16 amount specified in this subsection, the state shall release
17 the lien. If no lien has been recorded at the time the person
18 sells or transfers the property, then the person shall not be
19 liable for any cleanup costs incurred by the state.

20 Sec. 4. Section 455B.418, Code 1993, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 4. For the purpose of determining
23 violations under this section and section 455B.417, the term
24 "person" does not include a person who holds indicia of
25 ownership in the hazardous waste or hazardous substance
26 disposal site which contains a hazardous waste or hazardous
27 substance, or where hazardous substances or wastes are
28 treated, stored, or disposed of, if such person has satisfied
29 the requirements of section 455B.381, subsection 7, unnumbered
30 paragraph 2, with respect to the disposal site, whether or not
31 the director has determined that such disposal site
32 constitutes a hazardous condition site.

33 Sec. 5. Section 455B.471, subsection 6, unnumbered
34 paragraph 2, Code 1993, is amended by striking the unnumbered
35 paragraph and inserting in lieu thereof the following:

1 "Owner" does not include a person who holds indicia of
2 ownership in the underground storage tank or the tank site
3 property if all of the following apply:

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

29 (b) The person does not exhibit managerial control of, or
30 managerial responsibility for, the daily operation of the
31 underground storage tank or tank site property through the
32 actual, direct, and continual or recurrent exercise of
33 managerial control over the underground storage tank or tank
34 site property in which that person holds a security interest,
35 which managerial control materially divests the borrower,

1 debtor, owner or operator of the underground storage tank or
2 tank site property of such control.

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

6 Sec. 6. EFFECTIVE DATE. This Act, being deemed of
7 immediate importance, takes effect upon enactment.

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Rafferty, Chair

Gries

Holveck

Greig

Osterberg

NSB 155

ENERGY AND ENVIRONMENTAL PROTECTION

HOUSE FILE 645

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

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

A BILL FOR

1 An Act relating to exemptions from liability for hazardous
2 conditions.

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

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1 Section 1. Section 455B.381, subsection 7, Code 1993, is
2 amended by adding the following new unnumbered paragraph:
3 NEW UNNUMBERED PARAGRAPH. "Person having control over a
4 hazardous substance" does not include a person who, without
5 participating in the management or operation of the hazardous
6 condition site and without producing, handling, storing,
7 using, transporting, refining, or disposing of the hazardous
8 substance, the release of which created the hazardous
9 condition, holds indicia of ownership primarily to protect
10 that person's security interest in the hazardous substance.

11 EXPLANATION

12 This bill exempts persons who merely hold indicia of
13 ownership in a hazardous substance which creates a hazardous
14 condition or a hazardous condition site from strict liability
15 for cleanup costs and for damages for the release of the
16 hazardous substance. It does so by excluding persons holding
17 a security interest from the definition of persons having
18 control over a hazardous substance.

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HOUSE FILE 645

AN ACT

RELATING TO EXEMPTIONS FROM LIABILITY FOR ENVIRONMENTAL CONTAMINATION AND PROVIDING FOR A STATE LIEN ON THE PROPERTY AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 455B.171, subsection 11, Code 1993, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. For the purpose of imposing liability for violation of a section of this part, or a rule or regulation adopted by the department of natural resources under this part, "person" does not include a person who holds indicia of ownership in contaminated property from which prohibited discharges, deposits, or releases of pollutants into any water of the state have been or are evidenced, if the person has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, with respect to the contaminated property, regardless of whether the department has determined that the contaminated property constitutes a hazardous condition site.

Sec. 2. Section 455B.381, subsection 7, Code 1993, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. "Person having control over a hazardous substance" does not include a person who holds indicia of ownership in a hazardous condition site, if the person satisfies all of the following:

a. Holds indicia of ownership primarily to protect that person's security interest in the hazardous condition site, where the 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 hazardous condition site, where the 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 the interest. The person holding indicia of ownership in a hazardous condition site and who acquires title or a right to title to the site upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue to hold the indicia of ownership primarily to protect that person's security interest so long as the subsequent actions of the person with respect to the site 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.

b. Does not exhibit managerial control of, or managerial responsibility for, the daily operation of the hazardous condition site through the actual, direct, and continual or recurrent exercise of managerial control over the hazardous condition site in which that person holds a security interest, which managerial control materially divests the borrower, debtor, or obligor of control.

c. Has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

Sec. 3. Section 455B.392, Code 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 7. a. There is no liability under this section for a person who has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, regardless of when that person acquired title or right to title to the hazardous condition site, except that a person otherwise exempt from liability under this subsection shall be liable to the state for the lesser of:

(1) The total reasonable cleanup costs incurred by the state to cleanup a hazardous substance at the hazardous condition site; or

(2) The amount representing the postcleanup fair market value of the property comprising the hazardous condition site.

b. Liability under this subsection shall only be imposed when the person holds title to the hazardous condition site at the time the state incurs reasonable cleanup costs.

c. For purposes of this subsection, "postcleanup fair market value" means the actual amount of consideration received by such person upon sale or transfer of the hazardous condition site which has been cleaned up by the state to a bona fide purchaser for value.

d. Cleanup expenses incurred by the state shall be a lien upon the real estate constituting the hazardous condition site, recordable and collectable in the same manner as provided for in section 424.11, subject to the terms of this subsection. The lien shall attach at the time the state incurs expenses to clean up the hazardous condition site. The lien shall be valid as against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, only when a notice of the lien is filed with the recorder of the county in which the property is located. Upon payment by the person to the state, of the amount specified in this subsection, the state shall release the lien. If no lien has been recorded at the time the person sells or transfers the property, then the person shall not be liable for any cleanup costs incurred by the state.

Sec. 4. Section 455B.418, Code 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 4. For the purpose of determining violations under this section and section 455B.417, the term "person" does not include a person who holds indicia of ownership in the hazardous waste or hazardous substance disposal site which contains a hazardous waste or hazardous substance, or where hazardous substances or wastes are treated, stored, or disposed of, if such person has satisfied the requirements of section 455B.301, subsection 7, unnumbered paragraph 2, with respect to the disposal site, whether or not

the director has determined that such disposal site constitutes a hazardous condition site.

Sec. 5. Section 455B.471, subsection 6, unnumbered paragraph 2, Code 1993, is amended by striking the unnumbered paragraph and inserting in lieu thereof the following:

"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:

(a) 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.

(b) 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.

(c) 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.

Sec. 6. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

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 645, Seventy-fifth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved April 26, 1993

TERRY E. BRANSTAD
Governor

HF 645