

SENATE FILE 2230  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3107)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to immunity from third-party liability for claims  
2 resulting from contaminated property.

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

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SF 2230 COMMERCE

1 Section 1. NEW SECTION. 455B.751 DEFINITIONS.

2 As used in this division, unless the context otherwise  
3 requires:

4 1. "Acquired" means purchased, leased, or obtained by  
5 inheritance or descent and distribution.

6 2. "Hazardous substance" means the same as defined in  
7 section 455B.381 or 455B.411.

8 3. "Hazardous waste" means the same as defined in section  
9 455B.411.

10 4. "Potentially responsible party" means a person whose  
11 acts or omissions were a proximate cause of the contamination  
12 of the acquired property.

13 5. "Regulated substance" means the same as defined in  
14 section 455B.471.

15 6. "Third party" means any person other than a person that  
16 holds indicia of title to property as identified in section  
17 455B.752, subsection 1, or that has acquired property as  
18 identified in section 455B.752, subsection 2.

19 7. "Third-party liability" means any liability or  
20 obligation arising out of or resulting from contamination of  
21 property by a hazardous substance, hazardous waste, or a  
22 regulated substance, including without limitation, claims for  
23 illness, personal injury, death, consequential damages,  
24 exemplary damages, lost profits, trespass, loss of use of  
25 property, loss of rental value, reduction in property value,  
26 property damages, or statutory or common law nuisance.

27 Sec. 2. NEW SECTION. 455B.752 IMMUNITY FROM THIRD-PARTY  
28 LIABILITY.

29 1. A person that holds indicia of ownership of property  
30 contaminated by a hazardous substance, hazardous waste, or  
31 regulated substance, and that satisfies all of the conditions  
32 provided in section 455B.381, subsection 7, paragraphs "a",  
33 "b", and "c", or section 455B.471, subsection 6, paragraph  
34 "b", subparagraphs (1), (2), and (3), shall not be liable to  
35 any third party for any third-party liability arising from

1 such contamination.

2 2. A person that has acquired property contaminated by a  
3 hazardous substance, hazardous waste, or regulated substance  
4 shall not be liable to any third party for any third-party  
5 liability arising by reason of such contamination, provided  
6 that all of the following apply:

7 a. The person does not knowingly cause or permit a new or  
8 additional hazardous substance, hazardous waste, or regulated  
9 substance to arise on or from the acquired property that  
10 injures a third party or contaminates property owned or leased  
11 by a third party.

12 b. The person is not a potentially responsible party or  
13 affiliated with any potentially responsible party by reason of  
14 any of the following:

15 (1) Any direct or indirect familial relationship.

16 (2) Any contractual, corporate, or financial relationship,  
17 other than a contractual, corporate, or financial relationship  
18 that is created by the instruments by which title to the  
19 property is conveyed or financed or by a contract for the sale  
20 of goods or services.

21 (3) A reorganization of a business entity that is or was a  
22 potentially responsible party.

23 Sec. 3. NEW SECTION. 455B.753 ACCESS TO PROPERTY.

24 A person that holds indicia of title to property as  
25 identified in section 455B.752, subsection 1, or a person that  
26 has acquired property as identified in section 455B.752,  
27 subsection 2, shall provide reasonable access to the acquired  
28 property to any potentially responsible party or to any  
29 authorized regulatory authority for the purpose of  
30 investigating or evaluating any contamination, planning, or  
31 preparing a remedial plan for any abatement of the  
32 contamination, and for any required remediation.

33 EXPLANATION

34 This bill relates to immunity from third-party liability  
35 for claims resulting from contaminated property.

1 The bill provides that a person that holds indicia of  
2 ownership of property contaminated by a hazardous substance,  
3 hazardous waste, or regulated substance, and that satisfies  
4 certain ownership-related requirements, shall not be liable to  
5 any third party for any third-party liability arising from  
6 such contamination. The ownership-related requirements  
7 include holding indicia of ownership primarily to protect that  
8 person's security interest in the hazardous condition site,  
9 where the indicia of ownership was acquired either for the  
10 purpose of securing payment of a loan or other indebtedness,  
11 or in the course of protecting the security interest; not  
12 exhibiting managerial control of, or managerial responsibility  
13 for, the daily operation of the hazardous condition site  
14 through the actual, direct, and continual or recurrent  
15 exercise of managerial control over the hazardous condition  
16 site in which that person holds a security interest, which  
17 managerial control materially divests the borrower, debtor, or  
18 obligor of control; and taking no subsequent action with  
19 respect to the site which causes or exacerbates a release or  
20 threatened release of a hazardous substance.

21 The bill provides that a person that has acquired property  
22 contaminated by a hazardous substance, hazardous waste, or  
23 regulated substance shall not be liable to any third party for  
24 any third-party liability arising by reason of such  
25 contamination, provided that the person does not knowingly  
26 cause or permit a new or additional hazardous substance,  
27 hazardous waste, or regulated substance to arise on or from  
28 the acquired property that injures a third party or  
29 contaminates property owned or leased by a third party, and  
30 the person is not a potentially responsible party or  
31 affiliated with any potentially responsible party by reason of  
32 certain relationships. The relationships include any direct  
33 or indirect familial relationship; any contractual, corporate,  
34 or financial relationship, other than a contractual,  
35 corporate, or financial relationship that is created by the

1 instruments by which title to the property is conveyed or  
2 financed or by a contract for the sale of goods or services;  
3 or a reorganization of a business entity that is or was a  
4 potentially responsible party.

5 The bill requires a person that holds indicia of title to  
6 property as identified in this bill or a person that has  
7 acquired property as identified in this bill to provide  
8 reasonable access to the acquired property to any potentially  
9 responsible party or to any authorized regulatory authority  
10 for the purpose of investigating or evaluating any  
11 contamination, planning, or preparing a remedial plan for any  
12 abatement of the contamination, and for any required  
13 remediation.

14  
15 **SENATE FILE 2230**

16 **S-5040**

17 1 Amend Senate File 2230 as follows:

18 2 1. Page 1, by inserting after line 14 the  
19 3 following:

20 4 "5A. "Response action" means any action taken to  
21 5 reduce, minimize, eliminate, clean up, control,  
22 6 assess, or monitor a release of hazardous substances,  
23 7 hazardous waste, or regulated substances to protect  
24 8 the public health, safety, or the environment."

25 9 2. Page 2, by inserting after line 32 the  
26 10 following:

27 11 "Sec. \_\_\_\_ . NEW SECTION. 455B.754 LEGAL  
28 12 RESPONSIBILITY.

29 13 This division shall not be interpreted to affect  
30 14 the legal responsibility to the state to conduct  
31 15 response actions under any applicable state law.

32 16 Sec. \_\_\_\_ . EFFECTIVE DATE. This Act, being deemed  
33 17 of immediate importance, takes effect upon enactment."

34 18 3. Title page, line 2, by inserting after the  
35 19 word "property" the following: "and providing an  
20 effective date".

By ROGER STEWART  
STEVE KETTERING

**S-5040** FILED MARCH 8, 2004  
ADOPTED



1 Section 1. NEW SECTION. 455B.751 DEFINITIONS.

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7 section 455B.381 or 455B.411.

8 3. "Hazardous waste" means the same as defined in section  
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10 4. "Potentially responsible party" means a person whose  
11 acts or omissions were a proximate cause of the contamination  
12 of the acquired property.

13 5. "Regulated substance" means the same as defined in  
14 section 455B.471.

15 6. "Response action" means any action taken to reduce,  
16 minimize, eliminate, clean up, control, assess, or monitor a  
17 release of hazardous substances, hazardous waste, or regulated  
18 substances to protect the public health, safety, or the  
19 environment.

20 7. "Third party" means any person other than a person that  
21 holds indicia of title to property as identified in section  
22 455B.752, subsection 1, or that has acquired property as  
23 identified in section 455B.752, subsection 2.

24 8. "Third-party liability" means any liability or  
25 obligation arising out of or resulting from contamination of  
26 property by a hazardous substance, hazardous waste, or a  
27 regulated substance, including without limitation, claims for  
28 illness, personal injury, death, consequential damages,  
29 exemplary damages, lost profits, trespass, loss of use of  
30 property, loss of rental value, reduction in property value,  
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6 such contamination.

7 2. A person that has acquired property contaminated by a  
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10 liability arising by reason of such contamination, provided  
11 that all of the following apply:

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13 additional hazardous substance, hazardous waste, or regulated  
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15 injures a third party or contaminates property owned or leased  
16 by a third party.

17 b. The person is not a potentially responsible party or  
18 affiliated with any potentially responsible party by reason of  
19 any of the following:

20 (1) Any direct or indirect familial relationship.

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22 other than a contractual, corporate, or financial relationship  
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27 potentially responsible party.

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Succeeded By  
SF/HF 2230

SSB# 3107

Commerce

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
COMMERCE BILL BY  
CHAIRPERSON BEHN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

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13 for, the daily operation of the hazardous condition site  
14 through the actual, direct, and continual or recurrent  
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16 site in which that person holds a security interest, which  
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18 obligor of control; and taking no subsequent action with  
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March 31, 2004

VETO

The Honorable Jeff Lamberti  
President of the Senate  
State Capitol Building  
LOCAL

Dear President Lamberti:

**Senate File 2230** is a bill which seeks to improve the marketability of contaminated property. The thought behind the bill is that in many instances there is a better chance of contaminated land being cleaned up and put to a higher purpose if the land could be more easily sold to a new owner, and therefore we should take steps to improve the marketability of contaminated property. The aim of cleaning up contaminated property and putting the land to a higher use clearly merits consideration.

The bill's proponents contend that lenders currently are reluctant to foreclose on contaminated property if they perceive that there is even the slightest chance that they could be held liable for environmental contamination caused by their borrowers. Likewise, the bill's proponents contend that buyers will not purchase contaminated property if they perceive that there is even the slightest chance that they could be held liable for environmental contamination caused by the previous owner.

The bill's proponents would, therefore, improve the marketability of contaminated property by immunizing lenders and buyers, *who satisfy all of the conditions set forth in bill*, from any conceivable "liability or obligation arising out of or resulting from contamination of property by a hazardous substance, hazardous waste, or a regulated substance, including without limitation, claims for illness personal injury, death" and other claims including property damage.

The "conditions" that are set forth in the bill are an attempt to ensure that the immunity provisions only benefit lenders and buyers who had no part in causing the property to be contaminated—in other words, to only immunize those that lack any responsibility for causing any property damage, personal injury or death that arises out of the contamination.

I am concerned that the "conditions" set forth in the bill do not go far enough to adequately ensure that this bill only immunizes those buyers who truly lack any responsibility for causing property damage, personal injury or death that arises out of contaminated property. I do not want to sign a bill into law that would immunize from any accountability those who bear some or all responsibility for causing injury or death.

A buyer of land who had nothing to do with causing the property to become environmentally contaminated, could nonetheless be fully and knowingly responsible for causing completely innocent Iowans to become exposed to and injured or killed by the contaminants that already existed on the land at the time of purchase.

For instance, under this bill an out-of-state childcare center developer who did not cause any contamination, could nonetheless knowingly buy contaminated property at a bargain price, make no attempt to clean up the contaminants, conceal any knowledge of the contamination, and then encourage unknowing Iowans to send their children to this childcare center where they would be continually exposed to high levels of known carcinogens—and yet the developer would be completely immune from any accountability to the families of those innocent Iowan children who fall ill or die.

The childcare center developer did not cause the contamination, but was responsible for the injuries. This is not the type of conduct that anyone, including the supporters of this bill, wish to immunize from accountability—nonetheless the language of this bill would allow it to happen.

Similarly, a buyer who did not cause the contamination, could nonetheless be completely responsible for causing an injury or death by making a conscious decision to place employees or others in harm's way in order to save a few dollars by removing the existing safety measures which were installed by the previous owner to protect innocent Iowans from any harm arising out of the contamination. Again, this is not the type of conduct that anyone, including the supporters of this bill, wish to immunize from accountability—nonetheless the language of this bill would allow it to happen.

I am also concerned that under the language of this bill, the lenders and buyers would also be immunized from any accountability in regard to any property damage to state lands.

For the above reasons, I hereby respectfully disapprove Senate File 2230. However, I stand ready to work with legislators to establish protections yet improve the marketability of contaminated property.

Sincerely,

Thomas J. Vilsack  
Governor

TJV:jmc

cc: Secretary of the Senate  
Chief Clerk of the House

REDACTED

SENATE FILE 2230

AN ACT

RELATING TO IMMUNITY FROM THIRD-PARTY LIABILITY FOR CLAIMS  
RESULTING FROM CONTAMINATED PROPERTY AND PROVIDING AN  
EFFECTIVE DATE.

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

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As used in this division, unless the context otherwise  
requires:

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3. "Hazardous waste" means the same as defined in section 455B.411.

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6. "Response action" means any action taken to reduce, minimize, eliminate, clean up, control, assess, or monitor a release of hazardous substances, hazardous waste, or regulated substances to protect the public health, safety, or the environment.

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1. A person that holds indicia of ownership of property contaminated by a hazardous substance, hazardous waste, or regulated substance, and that satisfies all of the conditions provided in section 455B.381, subsection 7, paragraphs "a", "b", and "c", or section 455B.471, subsection 6, paragraph "b", subparagraphs (1), (2), and (3), shall not be liable to any third party for any third-party liability arising from such contamination.

2. A person that has acquired property contaminated by a hazardous substance, hazardous waste, or regulated substance shall not be liable to any third party for any third-party liability arising by reason of such contamination, provided that all of the following apply:

a. The person does not knowingly cause or permit a new or additional hazardous substance, hazardous waste, or regulated substance to arise on or from the acquired property that injures a third party or contaminates property owned or leased by a third party.

b. The person is not a potentially responsible party or affiliated with any potentially responsible party by reason of any of the following:

- (1) Any direct or indirect familial relationship.
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- (3) A reorganization of a business entity that is or was a potentially responsible party.

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Sec. 4. NEW SECTION. 455B.754 LEGAL RESPONSIBILITY.

This division shall not be interpreted to affect the legal responsibility to the state to conduct response actions under any applicable state law.

Sec. 5. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

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JEFFREY M. LAMBERTI  
President of the Senate

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CHRISTOPHER C. RANTS  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2230, Eightieth General Assembly.

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MICHAEL E. MARSHALL  
Secretary of the Senate

Approved \_\_\_\_\_, 2004

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THOMAS J. VILSACK  
Governor