

CHAPTER 16**HAZARDOUS SUBSTANCE CLEANUP —
COSTS AND REIMBURSEMENT**

S.F. 328

AN ACT relating to reimbursement of hazardous substance cleanup costs.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 455B.381, subsection 2, Code 2009, is amended to read as follows:

2. "Cleanup costs" means costs incurred by the state or its political subdivisions or ~~their agents, or by any other person participating with the approval of the director~~ the agents of the state or a political subdivision in the prevention or mitigation of damages from a hazardous condition or the cleanup of a hazardous substance involved in a hazardous condition.

Sec. 2. Section 455B.381, Code 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 7A. "Political subdivision" means any municipality, township, or county, or district, or authority, or any portion, or combination of two or more thereof, including but not limited to any emergency services and emergency management agency established pursuant to chapter 28E or 29C, and any municipal fire departments and ambulance services and agents thereof.

Sec. 3. Section 455B.392, subsections 1, 5, 6, and 7, Code 2009, are amended to read as follows:

1. A person having control over a hazardous substance is strictly liable to the state or a political subdivision for all of the following:

a. The reasonable cleanup costs incurred by the state or its political subdivisions, ~~by governmental subdivisions, or by any other persons participating in the prevention or mitigation of damages with the approval of the director, or the agents of the state or a political subdivision~~ as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition caused by that person.

b. The reasonable costs incurred by the state or its political subdivisions or the agents of the state or a political subdivision to evacuate people from the area threatened by a hazardous condition caused by the person.

c. The reasonable damages to the state for the injury to, destruction of, or loss of natural resources resulting from a hazardous condition caused by that person including the costs of assessing the injury, destruction, or loss.

d. The excessive and extraordinary cost, ~~excluding salaries,~~ incurred by the ~~department state or its political subdivisions or the agents of the state or a political subdivision~~ in responding at and to the scene of a hazardous condition caused by that person.

If the failure is willful, the person is liable for punitive damages not to exceed triple the cleanup costs incurred by the state or its political subdivisions or the agents of the state or a political subdivision. Prompt and good faith notification to the ~~director~~ state or a political subdivision by the person having control over a hazardous substance that the person does not have the resources or managerial capability to begin or continue cleanup, or a good faith effort to clean up, relieves the person of liability for punitive damages, but not for actual cleanup costs. ~~The director shall keep a record of all expenses incurred in carrying out a project or activity authorized by this part.~~

~~Claims by the state under this subsection may be appealed to the commission by the person filing a written notice of appeal within thirty days after receipt of the bill shall be made by the state agency or the political subdivision that incurred costs or damages under this subsection, and such costs or damages will be subject to administrative and judicial review, including the terms of chapter 17A when appropriate. If administrative or judicial review is sought, a political subdivision making a claim shall submit an advisory request to the department to determine whether the cleanup actions serving as the basis for the cleanup costs were consistent~~

with this chapter. The department shall respond in writing to a request within thirty days of receiving the request.

5. Money collected by the department pursuant to this section shall be deposited in the hazardous waste remedial fund created in section 455B.423. Moneys shall be used to reimburse governmental subdivisions requested to assist in the cleanup for which the moneys were collected. The remainder of the moneys shall be used in the manner permitted for the fund. Moneys collected by a state agency other than the department of natural resources pursuant to this section are appropriated to that agency for purposes of reimbursing costs of the agency for emergency response activities described in subsection 1. Moneys collected by a political subdivision pursuant to this section shall be retained by the political subdivision and shall be used for purposes of reimbursing costs of the political subdivision for emergency response activities described in subsection 1.

6. This section does not deny any person any legal or equitable rights, remedies or defenses or affect any legal relationship other than the legal relationship between the state or a political subdivision and a person having control over a hazardous substance pursuant to subsection 1.

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 or a political subdivision for the lesser of:

(1) The total reasonable cleanup costs incurred by the state to clean up 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 or a political subdivision 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 or a political subdivision to a bona fide purchaser for value.

d. Cleanup expenses incurred by the state or a political subdivision 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 or a political subdivision 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 or a political subdivision, of the amount specified in this subsection, the state or a political subdivision 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 or a political subdivision.

Sec. 4. Section 455B.396, Code 2009, is amended to read as follows:

455B.396 CLAIM OF STATE.

Liability to the state under this part or part 5 of this division is a debt to the state. Liability to a political subdivision under this part of this division is a debt to the political subdivision. The debt, together with interest on the debt at the maximum lawful rate of interest permitted pursuant to section 535.2, subsection 3, paragraph "a" from the date costs and expenses are incurred by the department state or a political subdivision is a lien on real property, except single and multifamily residential property, on which the department incurs costs and expenses creating a liability and owned by the persons liable under this part or part 5. To perfect the lien a statement of claim describing the property subject to the lien, ~~signed by the director and approved by the commission~~ must be filed within one hundred twenty days after the incur-

rence of costs and expenses by the ~~department~~ state or a political subdivision. The statement shall be filed with, accepted by, and recorded by the county recorder in the county in which the property subject to the lien is located. The statement of claim may be amended to include subsequent liabilities. To be effective the statement of claim shall be amended and filed within one hundred twenty days after the occurrence of the event resulting in the amendment.

The lien may be dissolved by filing with the appropriate recording officials a certificate, ~~signed by the director~~, that the debt for which the lien is attached, together with interest and costs on the debt, has been paid or legally abated.

Approved March 19, 2009

CHAPTER 17

GRAIN DEPOSITORS AND SELLERS INDEMNITY FUND — FEES AND CLAIMS

H.F. 374

AN ACT relating to the grain depositors and sellers indemnity fund, and providing for an effective date and retroactive applicability.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 203D.5, subsection 2, Code 2009, is amended to read as follows:

2. If, at the end of any three-month period, the assets of the fund exceed ~~six~~ eight million dollars, less any encumbered balances or pending or unsettled claims, the per-bushel fee required under section 203D.3, subsection 2, and the dealer-warehouse fee required under section 203D.3, subsection 3, shall be waived and the fees are not assessable or owing. The board shall reinstate the fees if the assets of the fund, less any unencumbered balances or pending or unsettled claims, are three million dollars or less.

Sec. 2. Section 203D.6, subsection 1, Code 2009, is amended to read as follows:

1. ~~PERSONS WHO MAY FILE CLAIMS — TIME OF FILING~~. A depositor or seller may file a claim with the department for indemnification of a loss from the grain depositors and sellers indemnity fund. A claim shall be filed in the manner prescribed by the board. ~~A claim shall not be filed prior to the~~

1A. TIME OF FILING CLAIM.

a. As used in this subsection, an incurrence date, which is the earlier is when either of the following occurs:

a. ~~(1)~~ The revocation, termination, or cancellation of the license of the grain dealer or warehouse operator.

b. ~~(2)~~ The filing of a petition in bankruptcy by a licensed grain dealer or licensed warehouse operator.

b. To be timely, a claim shall must be filed within a claim period beginning on either incurrence date and ending one hundred twenty days of the after that incurrence date, regardless of whether a previous claim period has expired.

Sec. 3. Section 203D.6, subsection 3, paragraph d, Code 2009, is amended to read as follows:

d. That the claim derives from a covered transaction. For purposes of this paragraph, a claim derives from a covered transaction if the claimant is a seller who transferred title to the