

58:10-23.11g6

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 145

NJSA: 58:10-23.11g6 (Liability for underground storage tanks)

BILL NO: A2267 (Substituted for S1158)

SPONSOR(S): Bateman and Garcia

DATE INTRODUCED: March 20, 2000

COMMITTEE: **ASSEMBLY:** Solid and Hazardous Wastes

SENATE: Environment

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** March 26, 2001

SENATE: June 21, 2001

DATE OF APPROVAL: July 10, 2001

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Original version of bill enacted)

A2267

SPONSORS STATEMENT: (Begins on page 5 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

S1158

SPONSORS STATEMENT: (Begins on page 2 of original bill) Yes

Bill and Sponsors Statement identical to A2267

COMMITTEE STATEMENT:

ASSEMBLY: No

SENATE: Yes

Identical to Assembly Statement for A2267

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

ASSEMBLY, No. 2267

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MARCH 20, 2000

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman RAUL "RUDY" GARCIA

District 33 (Hudson)

Co-Sponsored by:

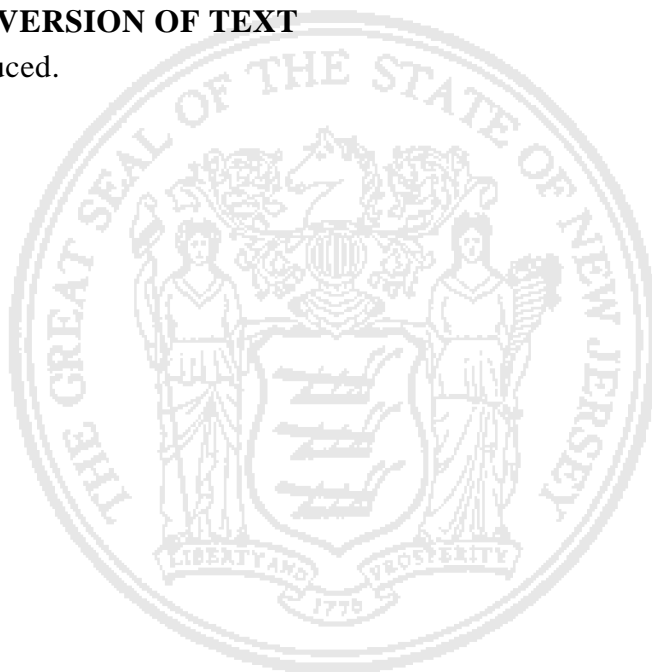
Assemblyman Augustine and Senator Cardinale

SYNOPSIS

Clarifies that the law concerning liability for underground storage tanks under certain circumstances applies to underground storage tank facilities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/22/2001)

1 AN ACT concerning liability for underground storage tank facilities
2 under certain circumstances and amending P.L. 1993, c. 112.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 3 of P.L.1993, c.112 (C.58:10-23.11g6) is amended to
8 read as follows:

9 3. The indicia of ownership, held after foreclosure, continue to be
10 maintained primarily as a protection for a security interest provided
11 that the holder did not participate in management prior to foreclosure
12 and that the holder undertakes to sell, re-lease property held pursuant
13 to a lease financing transaction (whether by a new lease financing
14 transaction or substitution of the lessee) or otherwise divest itself of
15 the vessel, facility, or underground storage tank facility in a reasonably
16 expeditious manner in accordance with the means and procedures
17 specified in this section. Such a holder may liquidate, maintain
18 business operations, undertake environmental response actions
19 pursuant to State and federal law, and take measures to preserve,
20 protect or prepare the secured asset prior to sale or other disposition,
21 without losing status as a person who maintains indicia of ownership
22 primarily to protect a security pursuant to section 2 of P.L.1993, c.112
23 (C.58:10-23.11g5).

24 a. For purposes of establishing that a holder is seeking to sell,
25 re-lease property held pursuant to a new lease financing transaction
26 (whether by a new lease financing transaction or substitution of the
27 lessee), or divest a vessel, facility, or underground storage tank facility
28 in a reasonably expeditious manner, the holder may use whatever
29 commercially reasonable means are relevant or appropriate with
30 respect to the vessel, facility, or underground storage tank facility, or
31 may employ the means specified in this section.

32 b. (1) A holder that outbids, rejects or fails to act upon a written
33 bona fide, firm offer of fair consideration within 90 days of receipt of
34 the offer, and which offer is received at any time after six months
35 following the date of foreclosure, shall not be deemed to be using a
36 commercially reasonable means for the purpose of this section. A
37 "written bona fide, firm offer" means a legally enforceable,
38 commercially reasonable, cash offer solely for the foreclosed vessel,
39 facility, or underground storage tank facility, including all material
40 terms of the transaction, from a ready, willing, and able purchaser who
41 demonstrates to the holder's satisfaction the ability to perform. For
42 purposes of this subsection, the six-month period begins to run from
43 the time that the holder acquires a marketable title, provided that the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 holder, after the expiration of any redemption or other waiting period
2 provided by law, was acting diligently to acquire marketable title.

3 (2) A holder that outbids, rejects, or fails to act upon an offer of
4 fair consideration for the vessel, facility, or underground storage tank
5 facility within the 90-day period, establishes that the ownership indicia
6 in the secured property are not held primarily to protect the security
7 interest, unless the holder is required, in order to avoid liability under
8 federal or State law, to make a higher bid, to obtain a higher offer, or
9 to seek or obtain an offer in a different manner.

10 c. A holder establishes that it is proceeding in a commercially
11 reasonable manner after foreclosure by, within 12 months following
12 foreclosure, listing the vessel, facility, or underground storage tank
13 facility with a broker, dealer, or agent who deals with the type of
14 property in question, or by advertising the vessel, facility, or
15 underground storage tank facility as being for sale or disposition on
16 at least a monthly basis in either a real estate publication or a trade or
17 other publication suitable for the vessel, facility, or underground
18 storage tank facility in question, or a newspaper of general circulation
19 (defined as one with a circulation over 10,000, or one suitable under
20 any applicable federal, State, or local rules of court for publication
21 required by court order or rules of civil procedure) covering the area
22 where the property is located. For purposes of this subsection, the
23 12-month period begins to run from the time that the holder acquires
24 marketable title, provided that the holder, after the expiration of any
25 redemption or other waiting period provided by law, was acting
26 diligently to acquire marketable title.

27 d. A holder shall sell, re-lease the property held pursuant to a new
28 lease financing transaction, or otherwise divest such vessel, facility, or
29 underground storage tank facility in a reasonably expeditious manner,
30 but not later than five years after the date of foreclosure, except that
31 a holder may continue to hold the property for a time period longer
32 than five years without losing status as a person who maintains indicia
33 of ownership primarily to protect a security interest if (1) the holder
34 has made a good faith effort to sell, re-lease or otherwise divest itself
35 of the property using commercially reasonable means or other
36 procedures prescribed by this act; (2) the holder has obtained any
37 approvals required pursuant to applicable federal or State banking or
38 other lending laws to continue its possession of the property; and (3)
39 the holder has exercised reasonable custodial care to prevent or
40 mitigate any new discharges from the vessel, facility, or underground
41 storage tank facility that could substantially diminish the market value
42 of the property.

43 e. (1) The exemption granted to holders pursuant to this section
44 shall not apply to the liability for any new discharge from the vessel,
45 facility, or underground storage tank facility, occurring after the date
46 of foreclosure, that is caused by acts or omissions of the holder which

1 can be shown, based on a preponderance of the evidence, to have been
2 negligent. In the event a property has both preexisting and new
3 discharges, the liability, if any, allocable to the holder pursuant to this
4 subsection shall be limited to those cleanup costs or damages that
5 relate directly to the new discharge. In the event there is a substantial
6 commingling of a new discharge with a preexisting discharge, the
7 liability, if any, allocable to the holder pursuant to this subsection shall
8 be limited to the cleanup costs or damages in excess of those cleanup
9 costs or damages relating to the preexisting discharge.

10 In order to establish that a discharge occurred or began prior to the
11 date of foreclosure, a holder may perform, but shall not be required to
12 perform, an environmental audit, in accordance with any applicable
13 Department of Environmental Protection regulations and guidelines,
14 to identify such discharges at the vessel, facility, or underground
15 storage tank facility. Upon receipt of a complete audit from the
16 holder, the Department of Environmental Protection shall, within 90
17 days of its receipt of the audit, review the audit and transmit its
18 findings to the holder. The Department of Environmental Protection
19 may charge reasonable fees and adopt any additional regulations
20 necessary to provide guidelines for the submission and review of such
21 audits.

22 (2) Nothing in this subsection shall be deemed to impose liability
23 for a new discharge from the vessel, facility, or underground storage
24 tank facility that is authorized pursuant to a federal or State permit or
25 cleanup procedure.

26 (3) The exemption granted to holders of indicia of ownership to
27 protect a security interest shall not apply to liability, if any, pursuant
28 to applicable law and regulation, for arranging for the offsite disposal
29 or treatment of a hazardous substance or by accepting for
30 transportation and disposing of a hazardous substance at an offsite
31 facility selected by the holder.

32 f. (1) A holder who acquires an underground storage tank facility
33 continues to hold the exemption from liability for the underground
34 storage tank facility granted to holders pursuant to this section if there
35 is an operator of the underground storage tank facility, other than the
36 holder, who is in control of the underground storage tank facility or
37 has responsibility for compliance with applicable federal and State
38 requirements.

39 (2) If an operator does not exist, a holder continues to maintain the
40 exemption from liability for the underground storage tank facility
41 granted to holders pursuant to this section if the holder: (i) empties
42 all underground storage **[tanks]** tank facilities within 60 days after
43 foreclosure or within 60 days after the effective date of P.L.1997,
44 c.278 (C.58:10B-1.1 et al.), whichever is later, so that no more than
45 one inch of residue, or .3 percent by weight of the total capacity of the
46 underground storage tank facility remains in the underground storage

1 tank facility, leaves vent lines open and functioning, and caps and
2 secures all other lines, pumps, manways, and ancillary equipment; (ii)
3 empties those underground storage [tanks] tank facilities that are
4 discovered after foreclosure within 60 days of discovery or within 60
5 days of the effective date of P.L.1997, c.278, whichever is later, so
6 that no more than one inch of residue, or .3 percent by weight of the
7 total capacity of the underground storage tank facility remains in the
8 system, leaves vent lines open and functioning, and caps and secures
9 all other lines, pumps, manways, and ancillary equipment; and (iii)
10 permanently closes the underground storage tank facility pursuant to
11 the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) or
12 temporarily closes the underground storage tank facility.

13 g. An underground storage tank facility may be temporarily closed
14 until a subsequent purchaser has acquired marketable title to the
15 underground storage tank facility. When a subsequent purchaser
16 acquires marketable title to the facility, the purchaser shall operate the
17 underground storage tank facility in accordance with applicable State
18 and federal laws or shall permanently close or remove the underground
19 storage tank facility in accordance with the provisions of P.L.1986,
20 c.102 (C.58:10A-21 et seq.).

21 For the purposes of this section, an underground storage tank
22 facility shall be considered temporarily closed if a holder [installs or]
23 continues to operate and maintain corrosion protection and reports
24 suspected releases to the Department of Environmental Protection. If
25 the underground storage tank facility has not been upgraded to comply
26 with the provisions of P.L.1986, c.102 and the applicable federal law
27 or does not comply with the standards for new underground storage
28 tanks pursuant to State and federal law except for spill and overfill
29 protection, and is temporarily closed for 12 months or more following
30 foreclosure, the holder shall conduct a site investigation of the
31 underground storage tank facility in accordance with rules and
32 regulations adopted by the department and shall be required to take
33 any emergency response actions necessary to prevent, contain or
34 mitigate a continuing or new discharge that poses an immediate threat
35 to the environment or to the public health, safety or welfare.

36 (cf: P.L.1997, c.278, s.31)

37

38 2. This act shall take effect immediately.

39

40

41

STATEMENT

42

43 This bill amends the liability provisions of the "Spill Compensation
44 and Control Act" concerning underground storage tanks by adding the
45 word "facility" to the term "underground storage tank" to clarify that
46 the provisions apply to one or more storage tanks. It also permits

A2267 BATEMAN, GARCIA

6

- 1 temporary closure without having to add new corrosion protection
- 2 equipment so long as there is no emergency threat to the environment
- 3 or to the public.

ASSEMBLY SOLID AND HAZARDOUS WASTE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2267

STATE OF NEW JERSEY

DATED: NOVEMBER 13, 2000

The Assembly Solid and Hazardous Waste Committee favorably reports Assembly Bill No. 2267.

This bill amends the liability provisions of the "Spill Compensation and Control Act" concerning underground storage tanks by adding the word "facility" to the term "underground storage tank" to clarify that the provisions apply to one or more storage tanks. It also permits temporary closure without having to add new corrosion protection equipment so long as there is no emergency threat to the environment or to the public.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2267

STATE OF NEW JERSEY

DATED: JUNE 11, 2001

The Senate Environment Committee favorably reports Assembly Bill No. 2267.

This bill amends the liability provisions of the "Spill Compensation and Control Act" concerning underground storage tanks by adding the word "facility" to the term "underground storage tank" to clarify that the provisions apply to one or more storage tanks. It also permits temporary closure without having to add new corrosion protection equipment so long as there is no emergency threat to the environment or to the public.

This bill is identical to Senate Bill No.1158 which was also released by the committee.

SENATE, No. 1158

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MARCH 23, 2000

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen)

SYNOPSIS

Clarifies that the law concerning liability for underground storage tanks under certain circumstances applies to underground storage tank facilities.

CURRENT VERSION OF TEXT

As introduced.



S1158 CARDINALE

2

1 AN ACT concerning liability for underground storage tank facilities
2 under certain circumstances and amending P.L.1993, c.112.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 3 of P.L.1993, c.112 (C.58:10-23.11g6) is amended to
8 read as follows:

9 3. The indicia of ownership, held after foreclosure, continue to be
10 maintained primarily as a protection for a security interest provided
11 that the holder did not participate in management prior to foreclosure
12 and that the holder undertakes to sell, re-lease property held pursuant
13 to a lease financing transaction (whether by a new lease financing
14 transaction or substitution of the lessee) or otherwise divest itself of
15 the vessel, facility, or underground storage tank facility in a reasonably
16 expeditious manner in accordance with the means and procedures
17 specified in this section. Such a holder may liquidate, maintain
18 business operations, undertake environmental response actions
19 pursuant to State and federal law, and take measures to preserve,
20 protect or prepare the secured asset prior to sale or other disposition,
21 without losing status as a person who maintains indicia of ownership
22 primarily to protect a security pursuant to section 2 of P.L.1993, c.112
23 (C.58:10-23.11g5).

24 a. For purposes of establishing that a holder is seeking to sell,
25 re-lease property held pursuant to a new lease financing transaction
26 (whether by a new lease financing transaction or substitution of the
27 lessee), or divest a vessel, facility, or underground storage tank facility
28 in a reasonably expeditious manner, the holder may use whatever
29 commercially reasonable means are relevant or appropriate with
30 respect to the vessel, facility, or underground storage tank facility, or
31 may employ the means specified in this section.

32 b. (1) A holder that outbids, rejects or fails to act upon a written
33 bona fide, firm offer of fair consideration within 90 days of receipt of
34 the offer, and which offer is received at any time after six months
35 following the date of foreclosure, shall not be deemed to be using a
36 commercially reasonable means for the purpose of this section. A
37 "written bona fide, firm offer" means a legally enforceable,
38 commercially reasonable, cash offer solely for the foreclosed vessel,
39 facility, or underground storage tank facility, including all material
40 terms of the transaction, from a ready, willing, and able purchaser who
41 demonstrates to the holder's satisfaction the ability to perform. For
42 purposes of this subsection, the six-month period begins to run from
43 the time that the holder acquires a marketable title, provided that the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 holder, after the expiration of any redemption or other waiting period
2 provided by law, was acting diligently to acquire marketable title.

3 (2) A holder that outbids, rejects, or fails to act upon an offer of
4 fair consideration for the vessel, facility, or underground storage tank
5 facility within the 90-day period, establishes that the ownership indicia
6 in the secured property are not held primarily to protect the security
7 interest, unless the holder is required, in order to avoid liability under
8 federal or State law, to make a higher bid, to obtain a higher offer, or
9 to seek or obtain an offer in a different manner.

10 c. A holder establishes that it is proceeding in a commercially
11 reasonable manner after foreclosure by, within 12 months following
12 foreclosure, listing the vessel, facility, or underground storage tank
13 facility with a broker, dealer, or agent who deals with the type of
14 property in question, or by advertising the vessel, facility, or
15 underground storage tank facility as being for sale or disposition on
16 at least a monthly basis in either a real estate publication or a trade or
17 other publication suitable for the vessel, facility, or underground
18 storage tank facility in question, or a newspaper of general circulation
19 (defined as one with a circulation over 10,000, or one suitable under
20 any applicable federal, State, or local rules of court for publication
21 required by court order or rules of civil procedure) covering the area
22 where the property is located. For purposes of this subsection, the
23 12-month period begins to run from the time that the holder acquires
24 marketable title, provided that the holder, after the expiration of any
25 redemption or other waiting period provided by law, was acting
26 diligently to acquire marketable title.

27 d. A holder shall sell, re-lease the property held pursuant to a new
28 lease financing transaction, or otherwise divest such vessel, facility, or
29 underground storage tank facility in a reasonably expeditious manner,
30 but not later than five years after the date of foreclosure, except that
31 a holder may continue to hold the property for a time period longer
32 than five years without losing status as a person who maintains indicia
33 of ownership primarily to protect a security interest if (1) the holder
34 has made a good faith effort to sell, re-lease or otherwise divest itself
35 of the property using commercially reasonable means or other
36 procedures prescribed by this act; (2) the holder has obtained any
37 approvals required pursuant to applicable federal or State banking or
38 other lending laws to continue its possession of the property; and (3)
39 the holder has exercised reasonable custodial care to prevent or
40 mitigate any new discharges from the vessel, facility, or underground
41 storage tank facility that could substantially diminish the market value
42 of the property.

43 e. (1) The exemption granted to holders pursuant to this section
44 shall not apply to the liability for any new discharge from the vessel,
45 facility, or underground storage tank facility, occurring after the date
46 of foreclosure, that is caused by acts or omissions of the holder which

1 can be shown, based on a preponderance of the evidence, to have been
2 negligent. In the event a property has both preexisting and new
3 discharges, the liability, if any, allocable to the holder pursuant to this
4 subsection shall be limited to those cleanup costs or damages that
5 relate directly to the new discharge. In the event there is a substantial
6 commingling of a new discharge with a preexisting discharge, the
7 liability, if any, allocable to the holder pursuant to this subsection shall
8 be limited to the cleanup costs or damages in excess of those cleanup
9 costs or damages relating to the preexisting discharge.

10 In order to establish that a discharge occurred or began prior to the
11 date of foreclosure, a holder may perform, but shall not be required to
12 perform, an environmental audit, in accordance with any applicable
13 Department of Environmental Protection regulations and guidelines,
14 to identify such discharges at the vessel, facility, or underground
15 storage tank facility. Upon receipt of a complete audit from the
16 holder, the Department of Environmental Protection shall, within 90
17 days of its receipt of the audit, review the audit and transmit its
18 findings to the holder. The Department of Environmental Protection
19 may charge reasonable fees and adopt any additional regulations
20 necessary to provide guidelines for the submission and review of such
21 audits.

22 (2) Nothing in this subsection shall be deemed to impose liability
23 for a new discharge from the vessel, facility, or underground storage
24 tank facility that is authorized pursuant to a federal or State permit or
25 cleanup procedure.

26 (3) The exemption granted to holders of indicia of ownership to
27 protect a security interest shall not apply to liability, if any, pursuant
28 to applicable law and regulation, for arranging for the offsite disposal
29 or treatment of a hazardous substance or by accepting for
30 transportation and disposing of a hazardous substance at an offsite
31 facility selected by the holder.

32 f. (1) A holder who acquires an underground storage tank facility
33 continues to hold the exemption from liability for the underground
34 storage tank facility granted to holders pursuant to this section if there
35 is an operator of the underground storage tank facility, other than the
36 holder, who is in control of the underground storage tank facility or
37 has responsibility for compliance with applicable federal and State
38 requirements.

39 (2) If an operator does not exist, a holder continues to maintain the
40 exemption from liability for the underground storage tank facility
41 granted to holders pursuant to this section if the holder: (i) empties
42 all underground storage **[tanks]** tank facilities within 60 days after
43 foreclosure or within 60 days after the effective date of P.L.1997,
44 c.278 (C.58:10B-1.1 et al.), whichever is later, so that no more than
45 one inch of residue, or .3 percent by weight of the total capacity of the
46 underground storage tank facility remains in the underground storage

1 tank facility, leaves vent lines open and functioning, and caps and
2 secures all other lines, pumps, manways, and ancillary equipment; (ii)
3 empties those underground storage ~~[tanks]~~ tank facilities that are
4 discovered after foreclosure within 60 days of discovery or within 60
5 days of the effective date of P.L.1997, c.278, whichever is later, so
6 that no more than one inch of residue, or .3 percent by weight of the
7 total capacity of the underground storage tank facility remains in the
8 system, leaves vent lines open and functioning, and caps and secures
9 all other lines, pumps, manways, and ancillary equipment; and (iii)
10 permanently closes the underground storage tank facility pursuant to
11 the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) or
12 temporarily closes the underground storage tank facility.

13 g. An underground storage tank facility may be temporarily closed
14 until a subsequent purchaser has acquired marketable title to the
15 underground storage tank facility. When a subsequent purchaser
16 acquires marketable title to the facility, the purchaser shall operate the
17 underground storage tank facility in accordance with applicable State
18 and federal laws or shall permanently close or remove the underground
19 storage tank facility in accordance with the provisions of P.L.1986.
20 c.102 (C.58:10A-21 et seq.).

21 For the purposes of this section, an underground storage tank
22 facility shall be considered temporarily closed if a holder ~~[installs or]~~
23 continues to operate and maintain corrosion protection and reports
24 suspected releases to the Department of Environmental Protection. If
25 the underground storage tank facility has not been upgraded to comply
26 with the provisions of P.L.1986, c.102 and the applicable federal law
27 or does not comply with the standards for new underground storage
28 tanks pursuant to State and federal law except for spill and overfill
29 protection, and is temporarily closed for 12 months or more following
30 foreclosure, the holder shall conduct a site investigation of the
31 underground storage tank facility in accordance with rules and
32 regulations adopted by the department and shall be required to take
33 any emergency response actions necessary to prevent, contain or
34 mitigate a continuing or new discharge that poses an immediate threat
35 to the environment or to the public health, safety or welfare.

36 (cf: P.L.1997, c.278, s.31)

37

38 2. This act shall take effect immediately.

39

40

41

STATEMENT

42

43 This bill amends the liability provisions of the "Spill Compensation
44 and Control Act" concerning underground storage tanks by adding the
45 word "facility" to the term "underground storage tank" to clarify that
46 the provisions apply to one or more storage tanks. It also permits

S1158 CARDINALE

6

- 1 temporary closure without having to add new corrosion protection
- 2 equipment so long as there is no emergency threat to the environment
- 3 or to the public.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 1158

STATE OF NEW JERSEY

DATED: JUNE 11, 2001

The Senate Environment Committee reports favorably Senate Bill No. 1158.

This bill amends the liability provisions of the "Spill Compensation and Control Act" concerning underground storage tanks by adding the word "facility" to the term "underground storage tank" to clarify that the provisions apply to one or more storage tanks. It also permits temporary closure without having to add new corrosion protection equipment so long as there is no emergency threat to the environment or to the public.

This bill is identical to Assembly Bill No. 2267, which was also released by the committee.

P.L. 2001, CHAPTER 145, *approved July 10, 2001*
Assembly, No. 2267

1 **AN ACT** concerning liability for underground storage tank facilities
2 under certain circumstances and amending P.L. 1993, c. 112.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. Section 3 of P.L.1993, c.112 (C.58:10-23.11g6) is amended to
8 read as follows:

9 3. The indicia of ownership, held after foreclosure, continue to be
10 maintained primarily as a protection for a security interest provided
11 that the holder did not participate in management prior to foreclosure
12 and that the holder undertakes to sell, re-lease property held pursuant
13 to a lease financing transaction (whether by a new lease financing
14 transaction or substitution of the lessee) or otherwise divest itself of
15 the vessel, facility, or underground storage tank facility in a reasonably
16 expeditious manner in accordance with the means and procedures
17 specified in this section. Such a holder may liquidate, maintain
18 business operations, undertake environmental response actions
19 pursuant to State and federal law, and take measures to preserve,
20 protect or prepare the secured asset prior to sale or other disposition,
21 without losing status as a person who maintains indicia of ownership
22 primarily to protect a security pursuant to section 2 of P.L.1993, c.112
23 (C.58:10-23.11g5).

24 a. For purposes of establishing that a holder is seeking to sell,
25 re-lease property held pursuant to a new lease financing transaction
26 (whether by a new lease financing transaction or substitution of the
27 lessee), or divest a vessel, facility, or underground storage tank facility
28 in a reasonably expeditious manner, the holder may use whatever
29 commercially reasonable means are relevant or appropriate with
30 respect to the vessel, facility, or underground storage tank facility, or
31 may employ the means specified in this section.

32 b. (1) A holder that outbids, rejects or fails to act upon a written
33 bona fide, firm offer of fair consideration within 90 days of receipt of
34 the offer, and which offer is received at any time after six months
35 following the date of foreclosure, shall not be deemed to be using a
36 commercially reasonable means for the purpose of this section. A
37 "written bona fide, firm offer" means a legally enforceable,
38 commercially reasonable, cash offer solely for the foreclosed vessel,
39 facility, or underground storage tank facility, including all material
40 terms of the transaction, from a ready, willing, and able purchaser who
41 demonstrates to the holder's satisfaction the ability to perform. For

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 purposes of this subsection, the six-month period begins to run from
2 the time that the holder acquires a marketable title, provided that the
3 holder, after the expiration of any redemption or other waiting period
4 provided by law, was acting diligently to acquire marketable title.

5 (2) A holder that outbids, rejects, or fails to act upon an offer of
6 fair consideration for the vessel, facility, or underground storage tank
7 facility within the 90-day period, establishes that the ownership indicia
8 in the secured property are not held primarily to protect the security
9 interest, unless the holder is required, in order to avoid liability under
10 federal or State law, to make a higher bid, to obtain a higher offer, or
11 to seek or obtain an offer in a different manner.

12 c. A holder establishes that it is proceeding in a commercially
13 reasonable manner after foreclosure by, within 12 months following
14 foreclosure, listing the vessel, facility, or underground storage tank
15 facility with a broker, dealer, or agent who deals with the type of
16 property in question, or by advertising the vessel, facility, or
17 underground storage tank facility as being for sale or disposition on
18 at least a monthly basis in either a real estate publication or a trade or
19 other publication suitable for the vessel, facility, or underground
20 storage tank facility in question, or a newspaper of general circulation
21 (defined as one with a circulation over 10,000, or one suitable under
22 any applicable federal, State, or local rules of court for publication
23 required by court order or rules of civil procedure) covering the area
24 where the property is located. For purposes of this subsection, the
25 12-month period begins to run from the time that the holder acquires
26 marketable title, provided that the holder, after the expiration of any
27 redemption or other waiting period provided by law, was acting
28 diligently to acquire marketable title.

29 d. A holder shall sell, re-lease the property held pursuant to a new
30 lease financing transaction, or otherwise divest such vessel, facility, or
31 underground storage tank facility in a reasonably expeditious manner,
32 but not later than five years after the date of foreclosure, except that
33 a holder may continue to hold the property for a time period longer
34 than five years without losing status as a person who maintains indicia
35 of ownership primarily to protect a security interest if (1) the holder
36 has made a good faith effort to sell, re-lease or otherwise divest itself
37 of the property using commercially reasonable means or other
38 procedures prescribed by this act; (2) the holder has obtained any
39 approvals required pursuant to applicable federal or State banking or
40 other lending laws to continue its possession of the property; and (3)
41 the holder has exercised reasonable custodial care to prevent or
42 mitigate any new discharges from the vessel, facility, or underground
43 storage tank facility that could substantially diminish the market value
44 of the property.

45 e. (1) The exemption granted to holders pursuant to this section
46 shall not apply to the liability for any new discharge from the vessel,

1 facility, or underground storage tank facility, occurring after the date
2 of foreclosure, that is caused by acts or omissions of the holder which
3 can be shown, based on a preponderance of the evidence, to have been
4 negligent. In the event a property has both preexisting and new
5 discharges, the liability, if any, allocable to the holder pursuant to this
6 subsection shall be limited to those cleanup costs or damages that
7 relate directly to the new discharge. In the event there is a substantial
8 commingling of a new discharge with a preexisting discharge, the
9 liability, if any, allocable to the holder pursuant to this subsection shall
10 be limited to the cleanup costs or damages in excess of those cleanup
11 costs or damages relating to the preexisting discharge.

12 In order to establish that a discharge occurred or began prior to the
13 date of foreclosure, a holder may perform, but shall not be required to
14 perform, an environmental audit, in accordance with any applicable
15 Department of Environmental Protection regulations and guidelines,
16 to identify such discharges at the vessel, facility, or underground
17 storage tank facility. Upon receipt of a complete audit from the
18 holder, the Department of Environmental Protection shall, within 90
19 days of its receipt of the audit, review the audit and transmit its
20 findings to the holder. The Department of Environmental Protection
21 may charge reasonable fees and adopt any additional regulations
22 necessary to provide guidelines for the submission and review of such
23 audits.

24 (2) Nothing in this subsection shall be deemed to impose liability
25 for a new discharge from the vessel, facility, or underground storage
26 tank facility that is authorized pursuant to a federal or State permit or
27 cleanup procedure.

28 (3) The exemption granted to holders of indicia of ownership to
29 protect a security interest shall not apply to liability, if any, pursuant
30 to applicable law and regulation, for arranging for the offsite disposal
31 or treatment of a hazardous substance or by accepting for
32 transportation and disposing of a hazardous substance at an offsite
33 facility selected by the holder.

34 f. (1) A holder who acquires an underground storage tank facility
35 continues to hold the exemption from liability for the underground
36 storage tank facility granted to holders pursuant to this section if there
37 is an operator of the underground storage tank facility, other than the
38 holder, who is in control of the underground storage tank facility or
39 has responsibility for compliance with applicable federal and State
40 requirements.

41 (2) If an operator does not exist, a holder continues to maintain the
42 exemption from liability for the underground storage tank facility
43 granted to holders pursuant to this section if the holder: (i) empties
44 all underground storage **[tanks]** tank facilities within 60 days after
45 foreclosure or within 60 days after the effective date of P.L.1997,
46 c.278 (C.58:10B-1.1 et al.), whichever is later, so that no more than

1 one inch of residue, or .3 percent by weight of the total capacity of the
2 underground storage tank facility remains in the underground storage
3 tank facility, leaves vent lines open and functioning, and caps and
4 secures all other lines, pumps, manways, and ancillary equipment; (ii)
5 empties those underground storage ~~[tanks]~~ tank facilities that are
6 discovered after foreclosure within 60 days of discovery or within 60
7 days of the effective date of P.L.1997, c.278, whichever is later, so
8 that no more than one inch of residue, or .3 percent by weight of the
9 total capacity of the underground storage tank facility remains in the
10 system, leaves vent lines open and functioning, and caps and secures
11 all other lines, pumps, manways, and ancillary equipment; and (iii)
12 permanently closes the underground storage tank facility pursuant to
13 the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) or
14 temporarily closes the underground storage tank facility.

15 g. An underground storage tank facility may be temporarily closed
16 until a subsequent purchaser has acquired marketable title to the
17 underground storage tank facility. When a subsequent purchaser
18 acquires marketable title to the facility, the purchaser shall operate the
19 underground storage tank facility in accordance with applicable State
20 and federal laws or shall permanently close or remove the underground
21 storage tank facility in accordance with the provisions of P.L.1986,
22 c.102 (C.58:10A-21 et seq.).

23 For the purposes of this section, an underground storage tank
24 facility shall be considered temporarily closed if a holder ~~[installs or]~~
25 continues to operate and maintain corrosion protection and reports
26 suspected releases to the Department of Environmental Protection. If
27 the underground storage tank facility has not been upgraded to comply
28 with the provisions of P.L.1986, c.102 and the applicable federal law
29 or does not comply with the standards for new underground storage
30 tanks pursuant to State and federal law except for spill and overfill
31 protection, and is temporarily closed for 12 months or more following
32 foreclosure, the holder shall conduct a site investigation of the
33 underground storage tank facility in accordance with rules and
34 regulations adopted by the department and shall be required to take
35 any emergency response actions necessary to prevent, contain or
36 mitigate a continuing or new discharge that poses an immediate threat
37 to the environment or to the public health, safety or welfare.

38 (cf: P.L.1997, c.278, s.31)

39

40 2. This act shall take effect immediately.

41

42

STATEMENT

43

44 This bill amends the liability provisions of the "Spill Compensation
45 and Control Act" concerning underground storage tanks by adding the
46 word "facility" to the term "underground storage tank" to clarify that

1 the provisions apply to one or more storage tanks. It also permits
2 temporary closure without having to add new corrosion protection
3 equipment so long as there is no emergency threat to the environment
4 or to the public.

5

6

7

8 Clarifies that the law concerning liability for underground storage
9 tanks under certain circumstances applies to underground storage tank
10 facilities.

CHAPTER 145

AN ACT concerning liability for underground storage tank facilities under certain circumstances and amending P.L. 1993, c. 112.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 3 of P.L.1993, c.112 (C.58:10-23.11g6) is amended to read as follows:

C.58:10-23.11g6 Status and liability of holders after foreclosure.

3. The indicia of ownership, held after foreclosure, continue to be maintained primarily as a protection for a security interest provided that the holder did not participate in management prior to foreclosure and that the holder undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee) or otherwise divest itself of the vessel, facility, or underground storage tank facility in a reasonably expeditious manner in accordance with the means and procedures specified in this section. Such a holder may liquidate, maintain business operations, undertake environmental response actions pursuant to State and federal law, and take measures to preserve, protect or prepare the secured asset prior to sale or other disposition, without losing status as a person who maintains indicia of ownership primarily to protect a security pursuant to section 2 of P.L.1993, c.112 (C.58:10-23.11g5).

a. For purposes of establishing that a holder is seeking to sell, re-lease property held pursuant to a new lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest a vessel, facility, or underground storage tank facility in a reasonably expeditious manner, the holder may use whatever commercially reasonable means are relevant or appropriate with respect to the vessel, facility, or underground storage tank facility, or may employ the means specified in this section.

b. (1) A holder that outbids, rejects or fails to act upon a written bona fide, firm offer of fair consideration within 90 days of receipt of the offer, and which offer is received at any time after six months following the date of foreclosure, shall not be deemed to be using a commercially reasonable means for the purpose of this section. A "written bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed vessel, facility, or underground storage tank facility, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this subsection, the six-month period begins to run from the time that the holder acquires a marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, was acting diligently to acquire marketable title.

(2) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the vessel, facility, or underground storage tank facility within the 90-day period, establishes that the ownership indicia in the secured property are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or State law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

c. A holder establishes that it is proceeding in a commercially reasonable manner after foreclosure by, within 12 months following foreclosure, listing the vessel, facility, or underground storage tank facility with a broker, dealer, or agent who deals with the type of property in question, or by advertising the vessel, facility, or underground storage tank facility as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the vessel, facility, or underground storage tank facility in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, State, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located. For purposes of this subsection, the 12-month period begins to run from the time that the holder acquires marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, was acting diligently to acquire marketable title.

d. A holder shall sell, re-lease the property held pursuant to a new lease financing transaction, or otherwise divest such vessel, facility, or underground storage tank facility in a reasonably expeditious manner, but not later than five years after the date of foreclosure, except that a holder may continue to hold the property for a time period longer than five years without losing status as a person who maintains indicia of ownership primarily to protect a security

interest if (1) the holder has made a good faith effort to sell, re-lease or otherwise divest itself of the property using commercially reasonable means or other procedures prescribed by this act; (2) the holder has obtained any approvals required pursuant to applicable federal or State banking or other lending laws to continue its possession of the property; and (3) the holder has exercised reasonable custodial care to prevent or mitigate any new discharges from the vessel, facility, or underground storage tank facility that could substantially diminish the market value of the property.

e. (1) The exemption granted to holders pursuant to this section shall not apply to the liability for any new discharge from the vessel, facility, or underground storage tank facility, occurring after the date of foreclosure, that is caused by acts or omissions of the holder which can be shown, based on a preponderance of the evidence, to have been negligent. In the event a property has both preexisting and new discharges, the liability, if any, allocable to the holder pursuant to this subsection shall be limited to those cleanup costs or damages that relate directly to the new discharge. In the event there is a substantial commingling of a new discharge with a preexisting discharge, the liability, if any, allocable to the holder pursuant to this subsection shall be limited to the cleanup costs or damages in excess of those cleanup costs or damages relating to the preexisting discharge.

In order to establish that a discharge occurred or began prior to the date of foreclosure, a holder may perform, but shall not be required to perform, an environmental audit, in accordance with any applicable Department of Environmental Protection regulations and guidelines, to identify such discharges at the vessel, facility, or underground storage tank facility. Upon receipt of a complete audit from the holder, the Department of Environmental Protection shall, within 90 days of its receipt of the audit, review the audit and transmit its findings to the holder. The Department of Environmental Protection may charge reasonable fees and adopt any additional regulations necessary to provide guidelines for the submission and review of such audits.

(2) Nothing in this subsection shall be deemed to impose liability for a new discharge from the vessel, facility, or underground storage tank facility that is authorized pursuant to a federal or State permit or cleanup procedure.

(3) The exemption granted to holders of indicia of ownership to protect a security interest shall not apply to liability, if any, pursuant to applicable law and regulation, for arranging for the offsite disposal or treatment of a hazardous substance or by accepting for transportation and disposing of a hazardous substance at an offsite facility selected by the holder.

f. (1) A holder who acquires an underground storage tank facility continues to hold the exemption from liability for the underground storage tank facility granted to holders pursuant to this section if there is an operator of the underground storage tank facility, other than the holder, who is in control of the underground storage tank facility or has responsibility for compliance with applicable federal and State requirements.

(2) If an operator does not exist, a holder continues to maintain the exemption from liability for the underground storage tank facility granted to holders pursuant to this section if the holder: (i) empties all underground storage tank facilities within 60 days after foreclosure or within 60 days after the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.), whichever is later, so that no more than one inch of residue, or .3 percent by weight of the total capacity of the underground storage tank facility remains in the underground storage tank facility, leaves vent lines open and functioning, and caps and secures all other lines, pumps, manways, and ancillary equipment; (ii) empties those underground storage tank facilities that are discovered after foreclosure within 60 days of discovery or within 60 days of the effective date of P.L.1997, c.278, whichever is later, so that no more than one inch of residue, or .3 percent by weight of the total capacity of the underground storage tank facility remains in the system, leaves vent lines open and functioning, and caps and secures all other lines, pumps, manways, and ancillary equipment; and (iii) permanently closes the underground storage tank facility pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) or temporarily closes the underground storage tank facility.

g. An underground storage tank facility may be temporarily closed until a subsequent purchaser has acquired marketable title to the underground storage tank facility. When a subsequent purchaser acquires marketable title to the facility, the purchaser shall operate the underground storage tank facility in accordance with applicable State and federal laws or shall

permanently close or remove the underground storage tank facility in accordance with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.).

For the purposes of this section, an underground storage tank facility shall be considered temporarily closed if a holder continues to operate and maintain corrosion protection and reports suspected releases to the Department of Environmental Protection. If the underground storage tank facility has not been upgraded to comply with the provisions of P.L.1986, c.102 and the applicable federal law or does not comply with the standards for new underground storage tanks pursuant to State and federal law except for spill and overfill protection, and is temporarily closed for 12 months or more following foreclosure, the holder shall conduct a site investigation of the underground storage tank facility in accordance with rules and regulations adopted by the department and shall be required to take any emergency response actions necessary to prevent, contain or mitigate a continuing or new discharge that poses an immediate threat to the environment or to the public health, safety or welfare.

2. This act shall take effect immediately.

Approved July 10, 2001.

PO BOX 004
TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

CONTACT: Tom Wilson
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RELEASE: July 10 , 2001

Acting Governor Donald T. DiFrancesco signed the following legislation today:

A-3081, sponsored by Senate Majority Leader John Bennett (R-Monmouth) and Senator Diane Allen (R-Burlington/Camden) and Assemblymen John Kelly (R-Bergen/Essex/Passaic) and Kevin O'Toole (R-Essex/Union), provides for oversight of "The Home Warranty and Builders' Relocation Act," a state administered program that provides buyers of new homes with warranty protection against defects in the construction or quality of the structural elements of their new home.

The bill also establishes a Board of Trustees to monitor and report on the financial performance of the fund.

S-1679, sponsored by Senator Ronald Rice (D-Essex) and Assemblyman Guy Talarico (R-Bergen), clarifies that the five-day grace period granted on the payment of rent to senior citizen lessees who are receiving Social Security Old Age Pension, Railroad Retirement Pensions or other governmental pension does not include Saturdays, Sundays or holidays. The bill also extends application of the grace period to lessees who are disabled.

S-2155, sponsored by Senators Walter Kavanaugh (R-Morris/Somerset) and John Lynch (D-Middlesex/Somerset/Union), permits judges of the former county court, county juvenile and domestic relations court and county district court who resigned in good standing to perform marriages.

A-1152, sponsored by Senator Norman Robertson (R-Essex/Passaic) and Assemblymen Scott Garrett (R-Sussex/Hunterdon/Morris) and Guy Gregg (R-Sussex/Hunterdon/Morris), clarifies that a trust established for the care of a pet is valid in this state.

A-2267, sponsored by Senator Gerald Cardinale (R-Bergen) and Assemblymen Kip Bateman (R-Morris/Somerset) and Rudy Garcia (D-Hudson), clarifies that the provisions of the "Spill Compensation and Control Act," concerning underground storage tanks applies to one or more storage tanks.

A-2934, sponsored by Senator Andrew Ciesla (R-Monmouth/Ocean) and Assemblymen James Holzapfel (R-Monmouth/Ocean) and David Wolfe (R-Monmouth/Ocean), authorizes a school district to enter into a 10-year lease-purchase agreement for the acquisition of school buses.

A-3098, sponsored by Senator Anthony Bucco (R-Morris) and Assemblymen Richard Merkt (R-Morris) and David Wolfe (R-Monmouth/Ocean), expands the meaning of

public library under the Public Library Project Grant Program to include association libraries, thereby allowing them to apply for funds under the program.

A-3536, sponsored by Senator Peter Inverso (R-Mercer/Middlesex) and Assemblymen James Holzapfel (R-Monmouth/Ocean) and Anthony Impreveduto (D-Bergen/Hudson), modifies the requirements to be eligible to take the public accountant certification examination such as, allowing applicants to take the licensure examination prior to completing the 150 semester hours of education if they apply before July 1, 2005 and have a baccalaureate degree and providing that certified public accountants must pass a registered municipal accountant's examination to qualify as a registered municipal accountant to undertake the work of auditing the financial statements of municipalities and counties.