

~~influence of alcohol or a controlled substance~~ violated this section, including results obtained from partial tests on an infrared breath-testing instrument. A result from a partial test is the measurement obtained by analyzing one adequate breath sample. A sample is adequate if the instrument analyzes the sample and does not indicate the sample is deficient.

Sec. 5. **EFFECTIVE DATE.**

Sections 1 to 4 are effective August 1, 1988, and apply to crimes committed on or after that date.

Approved April 26, 1988

CHAPTER 651—S.F.No. 412

An act relating to real property; creating a lien against real property where the state has incurred cleanup expenses and the owner is liable for the expenses under Minnesota Statutes, chapter 115B or 115C; providing procedures for implementation and enforcement of the lien; proposing coding for new law in Minnesota Statutes, chapter 514.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ENVIRONMENTAL LIEN FOR STATE CLEANUP ACTION EXPENSES

Section 1. **[514.671] DEFINITIONS.**

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 1 to 6.

Subd. 2. AGENCY. "Agency" means the pollution control agency.

Subd. 3. CLEANUP ACTION. "Cleanup action" means corrective action or response action.

Subd. 4. CLEANUP ACTION EXPENSES. "Cleanup action expenses" means expenses incurred for cleanup action under section 115B.17 or 115C.03, that are recoverable by the state under section 115B.04 or 115C.04.

Subd. 5. COMMISSIONER. "Commissioner" means the commissioner of the pollution control agency.

Subd. 6. CORRECTIVE ACTION. "Corrective action" has the meaning given in section 115C.02, subdivision 4.

Subd. 7. ENVIRONMENTAL LIEN. "Environmental lien" means a lien for cleanup action expenses under sections 1 to 6.

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 8. RELEASE. "Release" in relation to a substance entering the environment has the meanings given in sections 115B.02, subdivision 15, and 115C.02, subdivision 12.

Subd. 9. RESPONSE ACTION. "Response action" means remedial and removal action as defined in section 115B.02, subdivisions 16 and 17.

Sec. 2. [514.672] ENVIRONMENTAL LIEN.

Subdivision 1. LIEN AMOUNT; PROPERTY SUBJECT TO LIEN. All cleanup action expenses for which a person is liable to the state under section 115B.04 or 115C.04, constitute a lien in favor of the state upon all real property that:

(1) is owned by the person at the time the environmental lien notice is filed; and

(2) is subject to or affected by the cleanup action.

Subd. 2. ATTACHMENT. An environmental lien attaches when:

(1) cleanup action costs are first incurred by the state with respect to a cleanup action;

(2) the person referred to in subdivision 1 is provided, by certified or registered mail, written notice of potential liability; and

(3) a lien notice is filed as provided in section 3.

Subd. 3. CONTINUATION OF LIEN. An environmental lien continues until the liability for the cleanup action costs, or a judgment against the person referred to in subdivision 1 arising out of the liability, is satisfied or becomes unenforceable through operation of the statute of limitations under section 115B.11 or 541.05, subdivision 1, clause (2), unless the lien is released under subdivision 5.

Subd. 4. LIEN PRIORITY. An environmental lien is subject to the rights of any other person, including an owner, purchaser, holder of a mortgage or security interest, or judgment lien creditor, whose interest is perfected before a lien notice has been filed as provided in section 3. The rights of such other person must be afforded the same protections against an environmental lien as are afforded against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the lien notice as provided in section 3.

Subd. 5. RELEASE. (a) The commissioner shall release an environmental lien if:

(1) the environmental lien is satisfied;

(2) a legally enforceable agreement satisfactory to the agency under chapter 115B, or the commissioner under chapter 115C, has been executed relating to

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taking the cleanup action or reimbursing the agency for the cleanup action expenses;

(3) a claim or judgment for the cleanup action expenses is satisfied; or

(4) the environmental lien is unenforceable.

(b) The commissioner or the agency may release an environmental lien if the attachment or enforcement of the environmental lien is determined by the agency or commissioner not to be in the public interest.

(c) An environmental lien is unenforceable if:

(1) the lien is unenforceable under subdivision 3; or

(2) a determination is made by a court that the environmental lien is unenforceable.

(d) The commissioner shall execute the release of an environmental lien and file the release as provided in section 3, subdivision 2.

Sec. 3. [514.673] ENVIRONMENTAL LIEN NOTICE.

Subdivision 1. CONTENTS. An environmental lien notice must state:

(1) the name of the record owner of the real property where the environmental lien attached;

(2) the legal description of the real property where the environmental lien attached;

(3) a statement that the real property described in the notice is subject to or affected by a cleanup action for which cleanup action expenses have been incurred;

(4) a statement that the owner is potentially liable for cleanup action expenses under section 115B.04 or 115C.04; and

(5) a statement that an environmental lien has attached to the described real property.

Subd. 2. FILING. Any notice, release, or other document required to be filed under sections 1 to 6 must be filed in the office of the county recorder or the registrar of titles of the county where the real property is located. An attestation, certification, or acknowledgment is not required as a condition of filing. The filing or mailing of any notice, release, or other document under sections 1 to 6 is the responsibility of the commissioner or the commissioner's designee. A copy of an environmental lien notice must also be sent to each record owner and mortgagee of the real property by registered or certified mail.

Subd. 3. APPROVAL BY AGENCY OR PETROLEUM TANK RELEASE COMPENSATION BOARD. (a) The commissioner may not file an environmental lien notice until the agency board for cleanup action expenses incurred under chapter 115B, or the petroleum tank release compensation board for

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cleanup action expenses incurred under chapter 115C, the person referred to in section 2, subdivision 1, and each record owner and mortgagee of the real property have been notified in writing of the commissioner's intention to file the lien notice and the requirements for filing the lien under paragraph (b) have been met.

(b) By 30 days after receiving notification from the commissioner under paragraph (a), the agency board or petroleum tank release compensation board, after notice and opportunity for the person referred to in section 2, subdivision 1, to appear before the appropriate board, shall approve or disapprove of the filing of the lien by the commissioner. If the appropriate board disapproves of the filing, the lien may not be filed. If the appropriate board approves of the filing or, in the case of the petroleum tank release compensation board, takes no action on the matter within the 30 day period, the commissioner may file the lien notice.

Sec. 4. [514.674] LIEN ENFORCEMENT: LIMITATION.

Subdivision 1. FORECLOSURE PROCEDURE. Subject to the provisions of subdivision 2, an environmental lien may be enforced by foreclosure in the manner provided for foreclosure of judgment liens under chapter 550.

Subd. 2. PROPERTY USED FOR PRODUCTION OF INCOME. If the person referred to in section 2, subdivision 1, used the real property for the production of income at the time the lien attached, the lien may not be foreclosed until the person ceases to use the property for the production of income or the real property is transferred to another person. An environmental lien upon real property subject to this foreclosure limitation remains enforceable notwithstanding any law limiting the enforceability of a judgment arising out of the liability of the person referred to in section 2, subdivision 1.

Sec. 5. [514.675] LIEN DOES NOT AFFECT OTHER REMEDIES.

Nothing in sections 1 to 6 affects the right of the state to bring an action to recover cleanup action expenses under section 115B.04 or 115C.04.

Sec. 6. [514.676] AMOUNTS RECEIVED TO SATISFY LIEN.

Amounts received by the agency to satisfy all or a part of an environmental lien must be deposited in the state treasury and credited to the fund from which the expenses were paid.

Approved April 26, 1988

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