

Act No. 259
Public Acts of 1992
Approved by the Governor
December 7, 1992
Filed with the Secretary of State
December 8, 1992

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1992**

Introduced by Reps. Alley, Bartnik and Middaugh

ENROLLED HOUSE BILL No. 4806

AN ACT to amend section 12b of Act No. 307 of the Public Acts of 1982, entitled as amended "An act to provide for the identification, risk assessment, and priority evaluation of environmental contamination at certain sites in this state; to provide for response activity at certain facilities and sites; to prescribe the powers and duties of the governor, certain state agencies and officials, and other persons; to provide for the promulgation of rules; to require record notice regarding the status of certain facilities; to create certain funds and provide for their expenditure; to provide for public participation; to provide for methods of dispute resolution; to authorize grants, loans, and awards; to create certain boards, councils, and offices and to prescribe their powers and duties; to provide for judicial review; and to provide certain remedies and penalties," as added by Act No. 233 of the Public Acts of 1990, being section 299.612b of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 12b of Act No. 307 of the Public Acts of 1982, as added by Act No. 233 of the Public Acts of 1990, being section 299.612b of the Michigan Compiled Laws, is amended to read as follows:

Sec. 12b. (1) Except as otherwise provided in this section, a person that is a response activity contractor for any release or threatened release is not liable to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution and claims by third parties for death, personal injuries, illness, or loss of or damages to property or economic loss that result from the release or threatened release. This subsection does not apply if a release or threatened release is caused by conduct of the response activity contractor that is negligent, grossly negligent, or that constitutes intentional misconduct.

(2) Subsection (1) does not affect the liability of a person under any warranty under federal, state, or common law. This subsection does not affect the liability of an employer who is a response activity contractor to any employee of the employer under law, including any law relating to worker's compensation.

(3) An employee of this state or a local unit of government who provides services relating to a response activity while acting within the scope of his or her authority as a governmental employee has the same exemption from liability as is provided to the response activity contractor under subsection (1).

(4) The defense provided by section 12a(1)(c) is not available to any person that may be liable under section 12 with respect to any costs or damages caused by any act or omission of a response activity contractor. Except as provided in this section, this section does not affect the liability under this act or under any other federal or state law of any person.

(5) As used in subsections (1) to (4):

(a) "Response activity contract" means a written contract or agreement entered into by a response activity contractor with 1 or more of the following:

(i) The department.

(ii) The department of public health.

(iii) A person that may be liable under section 12 that is carrying out an agreement to undertake a response activity under this act.

(b) "Response activity contractor" means 1 or both of the following:

(i) A person that enters into a response activity contract with respect to a release or threatened release and is carrying out the terms of a contract.

(ii) A person that is retained or hired by a person described in subparagraph (i) to provide any service relating to a response activity.

(6) Notwithstanding any other provision of law, a person is not liable for response activity costs or damages that result from an act or the failure to act in the course of rendering care, assistance, or advice with respect to a release of petroleum into or on the surface waters of the state or on the adjoining shorelines to the surface waters of the state if the act or failure to act was consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or the director. This subsection does not apply to any of the following:

(a) A person who may be liable under section 12 who is a responsible party.

(b) An action with respect to personal injury or wrongful death.

(c) A person who is grossly negligent or who engages in willful misconduct.

(7) A person who may be liable under section 12 who is a responsible party is liable for any response activity costs and damages that another person is relieved of under subsection (6).

(8) As used in this subsection and subsection (6) and (7):

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the release or threatened release of petroleum.

(b) "Federal on-scene coordinator" means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under the national contingency plan, or the official designated by the lead agency to coordinate and direct response activity under the national contingency plan.

(c) "National contingency plan" means the national contingency plan prepared and published under section 311 of title III of the federal water pollution control act, chapter 758, 86 Stat. 844, 33 U.S.C. 1321.

(d) "Petroleum" means that term as it is defined in the leaking underground storage tank act, Act No. 478 of the Public Acts of 1988, being sections 299.831 to 299.850 of the Michigan Compiled Laws.

(e) "Responsible party" means a responsible party as defined under section 1001 of title I of the oil pollution act of 1990, Public Law 101-380, 33 U.S.C. 2701.

(9) This section does not affect a plaintiff's burden of establishing liability under this act.

This act is ordered to take immediate effect.

.....
Clerk of the House of Representatives.

.....
Secretary of the Senate.

Approved.....

.....
Governor.