

# HOUSE BILL No. 4806

May 9, 1991, Introduced by Reps. Alley, Bartnik and Middaugh and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend section 12b of Act No. 307 of the Public Acts of 1982, entitled as amended "The environmental response act," 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:

1 Section 1. Section 12b of Act No. 307 of the Public Acts of  
2 1982, as added by Act No. 233 of the Public Acts of 1990, being  
3 section 299.612b of the Michigan Compiled Laws, is amended to  
4 read as follows:

5 Sec. 12b. (1) ~~—A~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SEC-  
6 TION, A person that is a response activity contractor for any  
7 release or threatened release is not liable to any person for  
8 injuries, costs, damages, expenses, or other liability,  
9 including, but not limited to, claims for indemnification or

1 contribution and claims by third parties for death, personal  
2 injuries, illness, or loss of or damages to property or economic  
3 loss that result from the release or threatened release. This  
4 subsection shall not apply if a release or threatened release is  
5 caused by conduct of the response activity contractor that is  
6 negligent, grossly negligent, or that constitutes intentional  
7 misconduct.

8       (2) This section ~~shall~~ DOES not affect the liability of a  
9 person under any warranty under federal, state, or common law.  
10 This subsection ~~shall~~ DOES not affect the liability of an  
11 employer who is a response activity contractor to any employee of  
12 the employer under law, including any provision of law relating  
13 to worker's compensation.

14       (3) An employee of this state or a local unit of government  
15 who provides services relating to a response activity while  
16 acting within the scope of his or her authority as a governmental  
17 employee shall have the same exemption from liability as is pro-  
18 vided to the response activity contractor under this section.

19       (4) The defense provided by section 12a(1)(c) is not avail-  
20 able to any person that may be liable under section 12 with  
21 respect to any costs or damages caused by any act or omission of  
22 a response activity contractor. Except as provided in this sec-  
23 tion, this section ~~shall~~ DOES not affect the liability under  
24 this act or under any other federal or state law of any person.

25       (5) This section ~~shall~~ DOES not affect the plaintiff's  
26 burden of establishing liability under this act.

1 (6) A PERSON IS NOT LIABLE FOR RESPONSE ACTIVITY COSTS OR  
2 DAMAGES THAT RESULT FROM AN ACTION TAKEN OR THE FAILURE TO TAKE  
3 AN ACTION IN THE COURSE OF RENDERING CARE, ASSISTANCE, OR ADVICE  
4 CONSISTENT WITH THE NATIONAL CONTINGENCY PLAN OR AS OTHERWISE  
5 DIRECTED BY THE FEDERAL ON-SCENE COORDINATOR OR THE DIRECTOR.  
6 THIS SUBSECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

7 (A) A PERSON WHO MAY BE LIABLE UNDER SECTION 12.

8 (B) AN ACTION WITH RESPECT TO PERSONAL INJURY OR WRONGFUL  
9 DEATH.

10 (C) A PERSON WHO IS GROSSLY NEGLIGENT OR WHO ENGAGES IN  
11 WILLFUL MISCONDUCT.

12 (7) ONE OR MORE PERSONS THAT MAY BE LIABLE UNDER SECTION 12  
13 ARE LIABLE FOR THE SHARE OF RESPONSE ACTIVITY COSTS OR OTHER DAM-  
14 AGES, OR BOTH, FOR A SITE THAT ANOTHER PERSON IS RELIEVED OF  
15 UNDER SUBSECTION (6) FOR THAT SITE.

16 (8) ~~-(6)-~~ As used in this section:

17 (A) "DAMAGES" MEANS DAMAGES OF ANY KIND FOR WHICH LIABILITY  
18 MAY EXIST UNDER THE LAWS OF THIS STATE RESULTING FROM, ARISING  
19 OUT OF, OR RELATED TO THE DISCHARGE OR THREATENED DISCHARGE OF  
20 OIL.

21 (B) "FEDERAL ON-SCENE COORDINATOR" MEANS THE FEDERAL OFFI-  
22 CIAL PREDESIGNATED BY THE UNITED STATES ENVIRONMENTAL PROTECTION  
23 AGENCY OR THE UNITED STATES COAST GUARD TO COORDINATE AND DIRECT  
24 FEDERAL RESPONSES UNDER THE NATIONAL CONTINGENCY PLAN, OR THE  
25 OFFICIAL DESIGNATED BY THE LEAD AGENCY TO COORDINATE AND DIRECT  
26 REMOVAL UNDER THE NATIONAL CONTINGENCY PLAN.

1 (C) "NATIONAL CONTINGENCY PLAN" MEANS THE NATIONAL  
2 CONTINGENCY PLAN PREPARED AND PUBLISHED UNDER SECTION 311(d) OF  
3 TITLE III OF THE FEDERAL WATER POLLUTION CONTROL ACT,  
4 CHAPTER 758, 86 STAT. 844, 33 U.S.C. 1321.

5 (D) ~~(a)~~ "Response activity contract" means a written con-  
6 tract or agreement entered into by a response activity contractor  
7 with 1 or more of the following:

8 (i) The department.

9 (ii) The department of public health.

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

13 (E) ~~(b)~~ "Response activity contractor" means 1 or both of  
14 the following:

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

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