

# HOUSE BILL No. 5794

April 30, 1992, Introduced by Reps. Randall and Ostling and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend section 12 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 299.612 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Section 12 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 299.612 of the Michigan Compiled Laws, is amended to read  
4 as follows:

5       Sec. 12. (1) Notwithstanding any other provision or rule of  
6 law and subject only to the defenses set forth in sections 12a  
7 and 12b, if there is a release or threatened release from a  
8 facility that causes the incurrence of response activity costs,  
9 the following persons shall be liable under this section:

1 (a) The owner or operator of the facility.

2 (b) The owner or operator of the facility at the time of  
3 disposal of a hazardous substance.

4 (c) The owner or operator of the facility since the time of  
5 disposal of a hazardous substance not included in subdivision (a)  
6 or (b).

7 (d) A person that by contract, agreement, or otherwise  
8 arranged for disposal or treatment, or arranged with a trans-  
9 porter for transport for disposal or treatment, of a hazardous  
10 substance owned or possessed by the person, by any other person,  
11 at the facility owned or operated by another person and contain-  
12 ing the hazardous substance.

13 (e) A person that accepts or accepted any hazardous sub-  
14 stance for transport to the facility selected by that person.

15 (2) A person described in subsection (1) shall be liable for  
16 all of the following:

17 (a) All costs of response activity lawfully incurred by the  
18 state relating to the selection and implementation of response  
19 activity under this act.

20 (b) Any other necessary costs of response activity incurred  
21 by any other person consistent with rules relating to the selec-  
22 tion and implementation of response activity promulgated under  
23 this act.

24 (c) Damages for the full value of injury to, destruction of,  
25 or loss of natural resources, including the reasonable costs of  
26 assessing the injury, destruction, or loss resulting from the  
27 release.

1 (3) The costs of response activity recoverable under  
2 subsection (2) shall also include:

3 (a) All costs of response activity reasonably incurred by  
4 the state prior to the promulgation of rules relating to the  
5 selection and implementation of response activity under this act,  
6 excepting those cases where cost recovery actions have been filed  
7 before July 11, 1990. A person challenging the recovery of costs  
8 under this subdivision shall have the burden of establishing that  
9 the costs were not reasonably incurred under the circumstances  
10 that existed at the time the costs were incurred. Recoverable  
11 costs include costs incurred reasonably consistent with the rules  
12 relating to the selection and implementation of response activity  
13 in effect on July 11, 1990.

14 (b) Any other necessary costs of response activity reason-  
15 ably incurred by any other person prior to the promulgation of  
16 rules relating to the selection and implementation of response  
17 activity under this act. A person seeking recovery of these  
18 costs has the burden of establishing that the costs were reason-  
19 ably incurred under the circumstances that existed at the time  
20 the costs were incurred.

21 (4) The amounts recoverable in an action under this section  
22 shall include interest on the amounts recoverable under subsec-  
23 tions (2) and (3). This interest shall accrue from the date pay-  
24 ment is demanded in writing, or the date of the expenditure or  
25 damage, whichever is later. The rate of interest on the out-  
26 standing unpaid balance of the amounts recoverable under this  
27 section shall be the same rate as is specified in section 6013(5)

1 of the revised judicature act of 1961, Act No. 236 of the Public  
2 Acts of 1961, being section 600.6013 of the Michigan Compiled  
3 Laws.

4       (5) A person shall not be required under this act to under-  
5 take response activity for a permitted release. Recovery by any  
6 person for response activity costs or damages resulting from a  
7 permitted release shall be pursuant to other applicable law, in  
8 lieu of this act. This subsection shall not affect or modify in  
9 any way the obligations or liability of any person under any  
10 other state law, including common law, for damages, injury, or  
11 loss resulting from a release of a hazardous substance or for  
12 response activity or the costs of response activity.

13       (6) If the director determines that there may be an imminent  
14 and substantial endangerment to the public health or welfare or  
15 the environment because of an actual or threatened release from a  
16 facility, the attorney general may bring an action against any  
17 person described in subsection (1) or any other appropriate  
18 person to secure the relief that may be necessary to abate the  
19 danger or threat. The court has jurisdiction to grant such  
20 relief as the public interest and the equities of the case may  
21 require.

22       (7) In establishing liability under this section, the  
23 department shall bear the burden of proof, INCLUDING A SHOWING OF  
24 THE TYPE AND EXTENT OF ENVIRONMENTAL CONTAMINATION FOR WHICH THE  
25 ACTION WAS BROUGHT. If the department proves a prima facie case  
26 against a person, the person shall bear the burden of showing by

1 a preponderance of the evidence that they are not liable under  
2 this section.