



HOUSE BILL No. 4670

April 28, 1993, Introduced by Reps. Alley, Middaugh, Dolan, DeMars and Freeman and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend sections 3 and 12a of Act No. 307 of the Public Acts of 1982, entitled as amended "The environmental response act," section 3 as amended by Act No. 234 of the Public Acts of 1990 and section 12a as added by Act No. 233 of the Public Acts of 1990, being sections 299.603 and 299.612a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 3 and 12a of Act No. 307 of the Public
2 Acts of 1982, section 3 as amended by Act No. 234 of the Public
3 Acts of 1990 and section 12a as added by Act No. 233 of the
4 Public Acts of 1990, being sections 299.603 and 299.612a of the
5 Michigan Compiled Laws, are amended to read as follows:

6 Sec. 3. As used in this act:

1 (a) "Act of God" means an unanticipated grave natural
2 disaster or other natural phenomenon of an exceptional,
3 inevitable, and irresistible character, the effects of which
4 could not have been prevented or avoided by the exercise of due
5 care or foresight.

6 (b) "Agricultural property" means real property used for
7 farming in any of its branches, including cultivating of soil;
8 growing and harvesting of any agricultural, horticultural, or
9 floricultural commodity; dairying; raising of livestock, bees,
10 fish, fur-bearing animals, or poultry; turf and tree farming; and
11 performing any practices on a farm as an incident to, or in con-
12 junction with, these farming operations. Agricultural property
13 does not include property used for commercial storage, process-
14 ing, distribution, marketing, or shipping operations.

15 (c) "Attorney general" means the department of the attorney
16 general.

17 (d) "Commercial lending institution" means a state or
18 nationally chartered bank, a state or federally chartered savings
19 and loan association or savings bank, or a state or federally
20 chartered credit union, or other state or federally chartered
21 lending institution or a regulated affiliate or a regulated sub-
22 sidiary of any of these entities.

23 (e) "Department" means the director of the department of
24 natural resources or his or her designee.

25 (f) "Director" means the director of the department of natu-
26 ral resources.

1 (g) "Directors" means the directors or their designees of
2 the departments of natural resources, public health, agriculture,
3 and state police.

4 (h) "Disposal" means the discharge, deposit, injection,
5 dumping, spilling, leaking, or placing of any hazardous substance
6 into or on any land or water so that the hazardous substance or
7 any constituent of the hazardous substance may enter the environ-
8 ment or be emitted into the air or discharged into any groundwa-
9 ter or surface water.

10 (i) "Enforcement costs" means court expenses, reasonable
11 attorney fees of the attorney general, and other reasonable
12 expenses of an executive department that are incurred in relation
13 to enforcement under this act or rules promulgated under this
14 act, or both.

15 (j) "Environment" or "natural resources" means any land,
16 surface water, groundwater, subsurface ~~—~~ strata, air, fish,
17 wildlife, or biota within the state.

18 (k) "Environmental contamination" means the release of a
19 hazardous substance, or the potential release of a discarded haz-
20 ardous substance, in a quantity, which is or may become injurious
21 to the environment, or to the public health, safety, or welfare.

22 (l) "Evaluation" means those activities including but not
23 limited to investigation, studies, sampling, analysis, develop-
24 ment of feasibility studies, and administrative efforts, that are
25 needed to determine the nature, extent, and impact of a release
26 or threat of release and necessary response activities.

1 (m) "Facility" means any area, place, or property where a
2 hazardous substance has been released, deposited, stored,
3 disposed of, or otherwise comes to be located.

4 (n) "Feasibility study" means a process for developing,
5 evaluating, and selecting appropriate response activities.

6 (o) "Fund" means the environmental response fund established
7 in section 9, except as otherwise provided in section 11f.

8 (p) "Hazardous substance" means 1 or more of the following:

9 (i) ~~A chemical or other material which is or may become~~
10 ~~injurious to the public health, safety, or welfare or to the~~
11 ~~environment.~~ ANY SUBSTANCE THAT THE DEPARTMENT DEMONSTRATES, ON
12 A CASE BY CASE BASIS, POSES AN UNACCEPTABLE RISK TO PUBLIC
13 HEALTH, SAFETY, WELFARE, OR THE ENVIRONMENT, CONSIDERING THE FATE
14 OF THE MATERIAL, DOSE-RESPONSE, TOXICITY, OR ADVERSE IMPACT ON
15 NATURAL RESOURCES.

16 (ii) "Hazardous substance" as defined in the comprehensive
17 environmental response, compensation, and liability act of 1980,
18 Public Law 96-510, 94 Stat. 2767.

19 (iii) "Hazardous waste" as defined in the hazardous waste
20 management act, Act No. 64 of the Public Acts of 1979, being
21 sections 299.501 to 299.551 of the Michigan Compiled Laws.

22 (iv) "Petroleum" as defined in the leaking underground stor-
23 age tank act, Act No. 478 of the Public Acts of 1988, being sec-
24 tions 299.831 to 299.850 of the Michigan Compiled Laws.

25 (q) "Interim response activity" means the cleanup or removal
26 of a released hazardous substance or the taking of other actions,
27 prior to the implementation of a remedial action, as may be

1 necessary to prevent, minimize, or mitigate injury to the public
2 health, safety, or welfare, or to the environment. Interim
3 response activity ~~also~~ includes, but is not limited to, mea-
4 sures to limit access, replacement of water supplies, and tempo-
5 rary relocation of people as determined to be necessary by the
6 department. In addition, interim response activity means the
7 taking of other actions as may be necessary to prevent, minimize,
8 or mitigate a threatened release.

9 (r) "Local health department" means that term as defined in
10 section 1105 of the public health code, Act No. 368 of the Public
11 Acts of 1978, being section 333.1105 of the Michigan Compiled
12 Laws.

13 (s) "Local unit of government" means a county, city, town-
14 ship, or village, an agency of a local unit of government, an
15 authority or any other public body or entity created by or pursu-
16 ant to state law. Local unit of government does not include the
17 state or federal government or a state or federal agency.

18 (t) "Operator" means a person that is in control of or
19 responsible for the operation of a facility. Operator does not
20 include any of the following:

21 (i) A person that, without participating in the management
22 of the facility, holds indicia of ownership primarily to protect
23 the person's security interest in the facility, including, but
24 not limited to, a vendor's interest under a recorded land
25 contract. For the purposes of this act, a commercial lending
26 institution shall not be construed to be participating in the
27 management of a facility by extending credit, providing financial

1 services, providing financial advice, or supervising a plan to
2 resolve financial difficulties for an operator, or conducting or
3 causing to be conducted a prudent or legally required review or
4 investigation of environmental matters related to the facility or
5 the operator of the facility, if the actions of the commercial
6 lending institution do not suggest, condone, or encourage the
7 treatment or handling of a hazardous substance by the operator in
8 a manner that results in a release.

9 (ii) The state or a local unit of government that acquired
10 ownership or control of the facility involuntarily through bank-
11 ruptcy, tax delinquency, abandonment, or other circumstances in
12 which the government involuntarily acquires title or control by
13 virtue of its governmental function, a local unit of government
14 to which ownership or control of the facility is transferred by
15 the state, or the state or a local unit of government that
16 acquired ownership or control of the facility by seizure, receiv-
17 ership, or forfeiture pursuant to the operation of law or by
18 court order. ~~In case of an acquisition described in this sub-~~
19 ~~paragraph by~~ IF the state or a local unit of government ACQUIRES
20 A FACILITY IN A MANNER DESCRIBED IN THIS SUBPARAGRAPH, operator
21 means a person that was in control of or responsible for opera-
22 tion of the facility immediately before the state or local unit
23 of government acquired ownership or control. The exclusion pro-
24 vided in this subparagraph ~~shall~~ DOES not apply to the state or
25 a local unit of government that caused or contributed to the
26 release or threat of a release from the facility.

1 (iii) The operator of an underground storage tank system, as
2 defined in the leaking underground storage tank act, Act No. 478
3 of the Public Acts of 1988, being sections 299.831 to 299.850 of
4 the Michigan Compiled Laws, from which there is a release or
5 threat of release if all of the following conditions are met:

6 (A) The operator reported the release or threat of release
7 to the department of state police, fire marshal division, within
8 24 hours after confirmation of the release or threat of release.

9 (B) The release or threat of release at the facility is
10 solely the result of a release or threat of release of a regu-
11 lated substance as defined in Act No. 478 of the Public Acts of
12 1988 from an underground storage tank system.

13 (C) The operator is in compliance with the requirements of
14 Act No. 478 of the Public Acts of 1988, and any promulgated rules
15 or any order, agreement, or judgment issued or entered into pur-
16 suant to that act.

17 (iv) A state or local unit of government that holds or
18 acquires an easement interest in a facility, holds or acquires an
19 interest in a facility by dedication in a plat, or by dedication
20 pursuant to Act No. 283 of the Public Acts of 1909, being sec-
21 tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-
22 sion provided in this subparagraph ~~shall~~ DOES not apply to the
23 state or a local unit of government that holds an easement or
24 dedication if the state or that local unit of government caused
25 or contributed to a release or threat of release, or if equipment
26 owned or operated by the state or that local unit of government
27 caused or contributed to the release or threat of release.

1 (v) A person that holds an easement interest in a facility
2 for the purpose of conveying or providing goods or services,
3 including, but not limited to, utilities, sewers, roads, rail-
4 ways, and pipelines; or a person that acquires access through an
5 easement. The exclusion provided in this subparagraph ~~shall~~
6 DOES not apply to a person that holds an easement if that person
7 caused or contributed to a release or threat of release, or if
8 equipment owned or operated by that person caused or contributed
9 to the release or threat of release.

10 (vi) A person that satisfies all of the following:

11 (A) The release was caused solely by a third party who is
12 not an employee or agent of the person, or whose action was not
13 associated with a contractual relationship with the person.

14 (B) The hazardous substance was not deposited, stored, or
15 disposed of on the property upon which the person operates.

16 (C) The person at the time of transfer of the right to oper-
17 ate on the property discloses any knowledge or information con-
18 cerning the general nature and extent of the release as required
19 in section 10c.

20 (u) "Owner" means a person that owns a facility. Owner does
21 not include any of the following:

22 (i) A person that, without participating in the management
23 of the facility, holds indicia of ownership primarily to protect
24 the person's security interest in the facility, including, but
25 not limited to, a vendor's interest under a recorded land
26 contract. For the purposes of this act, a commercial lending
27 institution shall not be construed to be participating in the

1 management of a facility by extending credit, providing financial
2 services, providing financial advice, or supervising a plan to
3 resolve financial difficulties for an owner, or conducting or
4 causing to be conducted a prudent or legally required review or
5 investigation of environmental matters related to the facility or
6 the owner of the facility, if the actions of the commercial lend-
7 ing institution do not suggest, condone, or encourage the treat-
8 ment or handling of a hazardous substance by the owner in a
9 manner that results in a release.

10 (ii) The state or a local unit of government that acquired
11 ownership or control of the facility involuntarily through bank-
12 ruptcy, tax delinquency, abandonment, or other circumstances in
13 which the government involuntarily acquires title or control by
14 virtue of its governmental function, a local unit of government
15 to which ownership or control of the facility is transferred by
16 the state, or the state or a local unit of government that
17 acquired ownership or control of the facility by seizure, receiv-
18 ership, or forfeiture pursuant to the operation of law or by
19 court order. ~~In case of an acquisition described in this sub-~~
20 ~~paragraph by~~ IF the state or a local unit of government ACQUIRES
21 A FACILITY IN A MANNER DESCRIBED IN THIS SUBPARAGRAPH, owner
22 means any person who owned or controlled activities at the facil-
23 ity immediately before the state or local unit of government
24 acquired ownership or control. The exclusion provided in this
25 subparagraph ~~shall~~ DOES not apply to the state or a local unit
26 of government that caused or contributed to the release or threat
27 of a release from the facility.

1 (iii) A person that satisfies all of the following:

2 (A) The release was caused solely by a third party, who is
3 not an employee or agent of the person, or whose action was not
4 associated with a contractual relationship with the person.

5 (B) The hazardous substance was not deposited, stored, or
6 disposed of on that person's property.

7 (C) The person at the time of transfer of the property dis-
8 closes any knowledge or information concerning the general nature
9 and extent of the release as required in section 10c.

10 (iv) The owner of an underground storage tank system, as
11 defined in the leaking underground storage tank act, Act No. 478
12 of the Public Acts of 1988, being sections 299.831 to 299.850 of
13 the Michigan Compiled Laws, from which there is a release or
14 threat of release if all of the following conditions are met:

15 (A) The owner reported the release or threat of release to
16 the department of state police, fire marshal division, within 24
17 hours after confirmation of the release or threat of release.

18 (B) The release or threat of release at the facility is
19 solely the result of a release or threat of release of a regu-
20 lated substance as defined in Act No. 478 of the Public Acts of
21 1988 from an underground storage tank system.

22 (C) The owner is in compliance with the requirements of Act
23 No. 478 of the Public Acts of 1988, and any promulgated rules or
24 any order, agreement, or judgment issued or entered pursuant to
25 that act.

26 (v) A state or local unit of government that holds or
27 acquires an easement interest in a facility, holds or acquires an

1 interest in a facility by dedication in a plat, or by dedication
2 pursuant to Act No. 283 of the Public Acts of 1909, being sec-
3 tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-
4 sion provided in this subparagraph ~~shall~~ DOES not apply to the
5 state or a local unit of government that holds an easement or
6 dedication if that state or local unit of government caused or
7 contributed to a release or threat of release, or if equipment
8 owned or operated by the state or that local unit of government
9 caused or contributed to the release or threat of release.

10 (vi) A person that holds an easement interest in a facility
11 for the purpose of conveying or providing goods or services,
12 including, but not limited to, utilities, sewers, roads, rail-
13 ways, and pipelines; or a person that acquires access through an
14 easement. The exclusion provided in this subparagraph ~~shall~~
15 DOES not apply to a person that holds an easement if that person
16 caused or contributed to a release or threat of release, or if
17 equipment owned or operated by that person caused or contributed
18 to the release or threat of release.

19 (vii) A person that holds only subsurface mineral rights to
20 the property and has not caused or contributed to a release on
21 the property.

22 (v) "Permitted release" means 1 or more of the following:

23 (i) A release in compliance with an applicable, legally
24 enforceable permit issued under state law.

25 (ii) A lawful and authorized discharge into a permitted
26 waste treatment facility.

1 (iii) A federally permitted release as defined in the
2 comprehensive environmental response, compensation, and liability
3 act of 1980, Public Law 96-510, 94 Stat. 2767.

4 (w) "Person" means an individual, sole proprietorship, part-
5 nership, joint venture, trust, firm, joint stock company, corpo-
6 ration, including a government corporation, association, local
7 unit of government, commission, the state, a political subdivi-
8 sion of the state, an interstate body, the federal government, a
9 political subdivision of the federal government, or any other
10 legal entity.

11 (x) "Release" includes, but is not limited to, any spilling,
12 leaking, pumping, pouring, emitting, emptying, discharging,
13 injecting, escaping, leaching, dumping, or disposing of a hazard-
14 ous substance into the environment, or the abandonment or dis-
15 carding of barrels, containers, and other closed receptacles con-
16 taining a hazardous substance. Release does not include any of
17 the following:

18 (i) A release that results in exposure to persons solely
19 within a workplace, with respect to a claim that these persons
20 may assert against their employers.

21 (ii) Emissions from the engine exhaust of a motor vehicle,
22 rolling stock, aircraft, or vessel.

23 (iii) A release of source, by-product, or special nuclear
24 material from a nuclear incident, as those terms are defined in
25 the atomic energy act of 1954, chapter 1073, 68 Stat. 919, if
26 the release is subject to requirements with respect to financial
27 protection established by the nuclear regulatory commission under

1 section 170 of the atomic energy act of 1954, chapter 1073, 71
2 Stat. 576, 42 U.S.C. 2210, or, any release of source by-product,
3 or special nuclear material from any processing site designated
4 under section 102(a)(1) title I or 302(a) of title III of the
5 uranium mill tailings radiation control act of 1978, 42 U.S.C.
6 7912 and 7942.

7 (iv) If applied according to label directions and according
8 to generally accepted agricultural and management practices, the
9 application of a fertilizer, soil conditioner, agronomically
10 applied manure, or a pesticide, or a combination of these
11 substances. As used in this subparagraph, fertilizer and soil
12 conditioner have the meaning given to these terms in the fertil-
13 izer act of 1975, Act No. 198 of the Public Acts of 1975, being
14 sections 286.751 to 286.767, and pesticide has the meaning given
15 to that term in the pesticide control act, Act No. 171 of the
16 Public Acts of 1976, being sections 286.551 to 286.581 of the
17 Michigan Compiled Laws.

18 (y) "Remedial action" includes, but is not limited to,
19 cleanup, removal, containment, isolation, destruction, or treat-
20 ment of a hazardous substance released or threatened to be
21 released into the environment, monitoring, maintenance, or the
22 taking of other actions that may be necessary to prevent, mini-
23 mize, or mitigate injury to the public health, safety, or wel-
24 fare, or to the environment.

25 (z) "Remedial action plan" means a work plan for performing
26 remedial action under this act.

1 (aa) "Response activity" means evaluation, interim response
2 activity, remedial action, or the taking of other actions
3 necessary to protect the public health, safety, or welfare, or
4 the environment, or the natural resources. Response activity
5 also includes health assessments or health effect studies carried
6 out under the supervision, or with the approval of, the depart-
7 ment of public health, and enforcement actions related to any
8 response activity.

9 (bb) "Response activity costs" or "costs of response
10 activity" means all costs incurred in taking or conducting a
11 response activity, including enforcement costs.

12 (cc) "Rule" means a rule promulgated pursuant to the admin-
13 istrative procedures act of 1969, Act No. 306 of the Public Acts
14 of 1969, being sections 24.201 to 24.328 of the Michigan Compiled
15 Laws.

16 (dd) "Science advisory council" means the science advisory
17 council created in section 11d.

18 (ee) "Site" means the location of environmental
19 contamination.

20 (ff) "Threatened release" or "threat of release" means any
21 circumstance that may reasonably be anticipated to cause a
22 release.

23 Sec. 12a. (1) A person shall not be liable under section 12
24 if that person establishes by a preponderance of the evidence
25 that the release or threat of release was caused solely by:

26 (a) An act of God.

1 (b) An act of war.

2 (c) An act or omission of a third party other than an
3 employee or agent of the person that may be liable under
4 section 12, or other than one whose act or omission occurs in
5 connection with a contractual relationship, existing directly or
6 indirectly, with the person that may be liable under section 12
7 if the person that may be liable under section 12 establishes by
8 a preponderance of the evidence both of the following:

9 (i) That he or she exercised due care with respect to the
10 hazardous substance, taking into consideration the characteris-
11 tics of the hazardous substance, in light of all relevant facts
12 and circumstances.

13 (ii) That he or she took reasonable precautions against rea-
14 sonably foreseeable acts or omissions of a third party and the
15 consequences that foreseeably could result from those acts or
16 omissions.

17 (d) Any combination of subdivision (a), (b), or (c).

18 (2) The term contractual relationship, as used in subsection
19 (1)(c), includes, but is not limited to, land contracts, deeds,
20 or other instruments transferring title or possession, unless
21 both of the following are established:

22 (a) The real property on which the facility is located was
23 acquired by the person that may be liable under section 12 after
24 the disposal or placement of the hazardous substance on, in, or
25 at the property.

26 (b) The person that may be liable under section 12 by a
27 preponderance of the evidence proves 1 or more of the following:

1 (i) At the time the person that may be liable under
2 section 12 acquired the property, that person did not know and
3 had no reason to know that a hazardous substance that is the
4 subject of the release or threat of a release was disposed of on,
5 in, or at the facility.

6 (ii) The person that may be liable under section 12 is a
7 state or local unit of government that acquired the property by
8 purchase, gift, transfer, dedication, or condemnation, and, for
9 property acquired after ~~the effective date of this section~~
10 JULY 1, 1991, the state or local unit of government does all of
11 the following:

12 (A) Conducts or causes to be conducted a visual inspection
13 of the property and a review of the ownership and use history of
14 the property to determine whether a probability exists that the
15 property is a facility. If the visual inspection or the owner-
16 ship and use history, or both, show that there may be a release
17 or threat of release, the state or local unit of government shall
18 conduct, or cause to be conducted, an environmental assessment of
19 the property that includes an on-site evaluation of the nature
20 and extent, if any, of the release or threat of release, and an
21 inspection of all permanent structures on the property for the
22 presence of a hazardous substance.

23 (B) Prior to final acquisition, if the environmental assess-
24 ment required in subparagraph (ii)(A) discloses a release or
25 threat of release, the state or local unit of government shall do
26 all of the following:

1 (I) Provide a report of the findings and conclusions of the
2 environmental assessment to the governing body of the unit of
3 government.

4 (II) Provide a public notice of the availability of the
5 report of the findings and conclusions of the environmental
6 assessment.

7 (III) Submit the report and the environmental assessment to
8 the department.

9 (C) After final acquisition, if the environmental assessment
10 required in subparagraph (ii)(A) disclosed a release or threat of
11 release, the state or local unit of government shall provide the
12 department with a right of entry to the property at all reason-
13 able times for any of the purposes listed in section 10d(3)(a)
14 through (e).

15 (D) After final acquisition, unless waived by the director
16 through the exercise of his or her discretion, if the environmen-
17 tal assessment required in subparagraph (ii)(A) disclosed a
18 release or threat of release, the state or local unit of govern-
19 ment shall not transfer any legal interest, or any equitable or
20 possessory interest that relinquishes control over that property
21 for more than 45 days, unless the state or local unit of govern-
22 ment does all of the following:

23 (I) Provide any transferee with a copy of the environmental
24 assessment required in subparagraph (ii)(A) prior to the transfer
25 of the property.

26 (II) Include in any contract for transfer of the property a
27 statement that, absent a covenant not to sue from the state as

1 provided by section 14a, the transferee will be a person that may
2 be liable under section 12 of this act.

3 (III) Include as a condition to the transfer in any contract
4 for the transfer of the property that the transferee agrees to
5 provide the department with a right of entry to the property at
6 all reasonable times for any of the purposes listed in
7 section 10d(3)(a) through (e) related to a release or threat of
8 release disclosed in the environmental assessment required in
9 subparagraph (ii)(A).

10 (IV) Provide the department with a copy of the contract for
11 transfer of the property and a description of the intended use of
12 the property by the transferee within 14 days of the execution of
13 the transfer.

14 (iii) The person that may be liable under section 12
15 acquired the property by inheritance.

16 (3) In addition to establishing 1 or more of the circum-
17 stances described in subsection (2)(b)(i), (ii), or (iii), the
18 person that may be liable under section 12 shall establish that
19 he or she has satisfied the requirements of subsection (1)(c)(i)
20 and (ii).

21 (4) To establish that the person that may be liable under
22 section 12 had no reason to know, as required under subsection
23 (2)(b)(i), the person that may be liable under section 12 shall
24 have undertaken, at the time of acquisition, all appropriate
25 inquiry into the previous ownership and uses of the property con-
26 sistent with good commercial or customary practice in an effort
27 to minimize liability. For purposes of the preceding sentence,

1 the court shall take into account any specialized knowledge or
2 experience on the part of the person that may be liable under
3 section 12, the relationship of the purchase price to the value
4 of the property if uncontaminated by a hazardous substance, com-
5 monly known or reasonably ascertainable information about the
6 property, the obviousness of the presence or likely presence of a
7 release or threat of release at the property, and the ability to
8 detect a release or threat of release by appropriate inspection.

9 (5) This section shall not diminish the liability of a pre-
10 vious owner or operator of a facility that would otherwise be
11 liable under this act. Notwithstanding this section, if the
12 person that may be liable under section 12 obtained actual knowl-
13 edge of the release or threat of release at the facility when
14 that person owned the real property and then transferred owner-
15 ship of the property to another person without disclosing this
16 knowledge, the person shall be liable under section 12 and a
17 defense under this section shall not be available to that
18 person. Nothing in this section shall affect the liability under
19 this act of a person that may be liable under section 12 that, by
20 an act or omission, caused or contributed to the release or
21 threat of release that is the subject of a response activity at
22 the facility.

23 (6) The state or a local unit of government shall not be
24 liable under this act for costs or damages as a result of
25 response activity taken in response to a release or threat of
26 release. This subsection shall not preclude liability for costs
27 or damages as a result of gross negligence, including reckless,

1 willful, or wanton misconduct, or intentional misconduct by the
2 state or local unit of government.

3 (7) A commercial lending institution that has not partici-
4 pated in the management of a facility prior to taking title
5 acquires a property that is a facility through foreclosure or
6 through acceptance of a deed in lieu of foreclosure for the sole
7 purpose of realizing on a security interest shall not be liable
8 under this act, if 1 or more of the following are true:

9 (a) The property is a residential property.

10 (b) The property is an agricultural property.

11 (c) The commercial lending institution acquired ownership or
12 control of the property involuntarily through a court order or
13 other involuntary circumstance.

14 (d) The commercial lending institution would otherwise be
15 liable solely under section 12(1)(c) and the commercial lending
16 institution acquired ownership or control of the property prior
17 to August 1, 1990.

18 (8) If a commercial lending institution that has not partici-
19 ipated in the management of a facility prior to taking title,
20 other than those properties described in subsection (7)(a) or
21 (b), conducts, within 180 days before or after taking title to
22 the property, a valid foreclosure environmental assessment prior
23 to disposition of that property, and that foreclosure environmen-
24 tal assessment does not indicate that there was a release or
25 threat of release on the property, there is a rebuttable presump-
26 tion that the commercial lending institution has satisfied the
27 criteria specified in subsection (1)(c) with respect to that

1 property. The defense to liability in this subsection does not
2 apply to a release that started after the date on which the com-
3 mercial lending institution acquired title to the property and
4 during the time the commercial lending institution held title to
5 the property.

6 (9) If a commercial lending institution that prior to taking
7 title of a property through foreclosure or through acceptance of
8 a deed in lieu of foreclosure has not participated in the manage-
9 ment of property, other than a property described in
10 subsection (7)(a) or (b), performs a foreclosure environmental
11 assessment on the property within 180 days before or after taking
12 title to the property, and that foreclosure environmental assess-
13 ment indicates that there is a release or threat of release on
14 that property, the commercial lending institution shall not dis-
15 pose of that property unless the commercial lending institution
16 provides the department with a complete copy of the results of
17 the foreclosure environmental assessment, and the commercial
18 lending institution enters into an agreement with the department
19 regarding disposition of the property. If a commercial lending
20 institution submits a proposal to the department regarding dispo-
21 sition of the property, the department shall, within 6 months,
22 review the proposal and either approve the proposal or submit
23 changes to the commercial lending institution that would result
24 in approval of the proposal. However, if the commercial lending
25 institution and the department are unable to reach an agreement
26 pertaining to disposition of the property, the commercial lending
27 institution shall not transfer the property, other than to the

1 state. A commercial lending institution that establishes that it
2 has met the requirements of this subsection shall not be liable
3 under section 12 with respect to that property.

4 (10) A commercial lending institution or other person that
5 has not participated in the management of a property prior to
6 assuming ownership or control of the property as a fiduciary, as
7 defined by section 5, OR IN A REPRESENTATIVE CAPACITY FOR A DIS-
8 ABLED PERSON UNDER SECTION 495 of the revised probate code, Act
9 No. 642 of the Public Acts of 1978, being ~~section~~
10 SECTIONS 700.5 AND 700.495 of the Michigan Compiled Laws, and
11 that is acting or has acted in a capacity permitted by the
12 revised probate code, Act No. 642 of the Public Acts of 1978,
13 being sections 700.1 to 700.993 of the Michigan Compiled Laws,
14 shall not be personally liable as an owner or operator of the
15 property under this act. This subsection shall not do either of
16 the following:

17 (a) Relieve the fiduciary from personal liability as the
18 result of the fiduciary's assumption of personal liability, or
19 negligence, gross negligence, or reckless, willful, or inten-
20 tional misconduct.

21 (b) Prevent claims against the assets that are part of or
22 all of the estate or trust that contains the facility; any other
23 estate or trust of the decedent, grantor, ward, or other person
24 whose estate or trust contains the facility that is administered
25 by the commercial lending institution or other person; or any
26 other estate or trust of the decedent, grantor, ward, or other
27 person whose estate or trust contains the facility. Such claims

1 may be asserted against the fiduciary in its representative
2 capacity, whether or not the fiduciary is personally liable.

3 (11) A commercial lending institution that has not partici-
4 pated in the management of a property prior to assuming ownership
5 or control of the property in a fiduciary capacity, and pursuant
6 to a fiduciary agreement entered into on or before August 1, 1990
7 owns or controls the property in a fiduciary capacity that is not
8 regulated by Act No. 642 of the Public Acts of 1978 but is autho-
9 rized by the banking code of 1969, Act No. 319 of the Public Acts
10 of 1969, being sections 487.301 to 487.598 of the Michigan
11 Compiled Laws, or the national bank act, chapter 106, 13
12 Stat. 99, shall not be personally liable as an owner or operator
13 of the property under this act. This subsection shall not do
14 either of the following:

15 (a) Relieve the fiduciary from personal liability as the
16 result of the fiduciary's assumption of personal liability, neg-
17 ligence, gross negligence, or reckless, willful, or intentional
18 misconduct.

19 (b) Prevent claims against the assets that are part of or
20 all of the estate or trust that contains the facility; any other
21 estate or trust of the decedent, grantor, ward, or other person
22 whose estate or trust contains the facility that is administered
23 by the commercial lending institution; or any other estate or
24 trust of the decedent, grantor, ward, or other person whose
25 estate or trust contains the facility. Such claims may be
26 asserted against the fiduciary in its representative capacity,
27 whether or not the fiduciary is personally liable.

1 (12) A commercial lending institution that has not
2 participated in the management of a property prior to assuming
3 ownership or control of the property in a fiduciary capacity, and
4 pursuant to a fiduciary agreement entered into after August 1,
5 1990 owns or controls the property in a fiduciary capacity that
6 is not regulated by Act No. 642 of the Public Acts of 1978 but is
7 authorized by the banking code of 1969, Act No. 319 of the Public
8 Acts of 1969, being sections 487.301 to 487.598 of the Michigan
9 Compiled Laws, or the national bank act, chapter 106, 13
10 Stat. 99, that has served only in an administrative, custodial,
11 or financial capacity with respect to the property, and has not
12 exercised sufficient involvement to control the owner's or
13 operator's handling of a hazardous substance, shall not be per-
14 sonally liable as an owner or operator of the property under this
15 act. This subsection shall not do either of the following:

16 (a) Relieve the fiduciary from personal liability as the
17 result of the fiduciary's assumption of personal liability, neg-
18 ligence, gross negligence, or reckless, willful, or intentional
19 misconduct.

20 (b) Prevent claims against the assets that are part of or
21 all of the estate or trust that contains the facility; any other
22 estate or trust of the decedent, grantor, ward, or other person
23 whose estate or trust contains the facility that is administered
24 by the commercial lending institution; or any other estate or
25 trust of the decedent, grantor, ward, or other person whose
26 estate or trust contains the facility. Such claims may be

1-asserted against the fiduciary in its representative capacity,
2 whether or not the fiduciary is personally liable.

3 (13) The defenses to liability under section 12 in
4 subsections (7) to (12) in regard to a facility do not apply when
5 a commercial lending institution, or its agent, employee, or a
6 person retained by the commercial lending institution, caused or
7 contributed to a release or threat of release.

8 (14) As used in subsections (8) and (9), "foreclosure envi-
9 ronmental assessment" means to conduct, or cause to be conducted,
10 a visual inspection of property and a review of the ownership and
11 use history of the property to determine whether there is a
12 release or threat of release. If a visual inspection or the
13 ownership and use history, or both, show that there may be a
14 release or threat of release, a site specific on-site evaluation
15 of the nature and extent, if any, of the release or threat of
16 release shall be conducted, and an inspection of all permanent
17 structures on the property to determine the presence of a hazard-
18 ous substance shall be conducted.