



# HOUSE BILL No. 5380

November 7, 1995, Introduced by Reps. Sikkema, Alley and Middaugh and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend sections 20101, 20114a, and 20126 of Act No. 451 of the Public Acts of 1994, entitled "Natural resources and environmental protection act," section 20101 as amended by Act No. 117 of the Public Acts of 1995 and section 20114a as added and section 20126 as amended by Act No. 71 of the Public Acts of 1995, being sections 324.20101, 324.20114a, and 324.20126 of the Michigan Compiled Laws; and to add section 20115a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 20101, 20114a, and 20126 of Act No. 451  
2 of the Public Acts of 1994, section 20101 as amended by Act  
3 No. 117 of the Public Acts of 1995 and section 20114a as added  
4 and section 20126 as amended by Act No. 71 of the Public Acts of  
5 1995, being sections 324.20101, 324.20114a, and 324.20126 of the

1 Michigan Compiled Laws, are amended and section 20115a is added  
2 to read as follows:

3       Sec. 20101. (1) As used in this part:

4       (a) "Act of God" means an unanticipated grave natural  
5 disaster or other natural phenomenon of an exceptional, inevita-  
6 ble, and irresistible character, the effects of which could not  
7 have been prevented or avoided by the exercise of due care or  
8 foresight.

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

18       (c) "Attorney general" means the department of the attorney  
19 general.

20       (d) "Baseline environmental assessment" means an evaluation  
21 of environmental conditions which exist at a facility at the time  
22 of purchase, occupancy, or foreclosure that reasonably defines  
23 the existing conditions and circumstance at the facility so that,  
24 in the event of a subsequent release, there is a means of distin-  
25 guishing the new release from existing contamination.

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

4 (f) "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 (g) "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 part or rules promulgated under this  
14 part, or both.

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

18 (i) "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 (j) "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 (k) "Exacerbation" means the occurrence of either of the  
2 following caused by an activity undertaken by the person who owns  
3 or operates the property, with respect to existing  
4 contamination:

5 (i) Contamination that has migrated beyond the boundaries of  
6 the property which is the source of the release at levels above  
7 cleanup criteria specified in section 20120a(1)(a) unless a cri-  
8 terion is not relevant because exposure is reliably restricted  
9 pursuant to section 20120b.

10 (ii) A change in facility conditions that increases response  
11 activity costs.

12 (l) "Facility" means any area, place, or property where a  
13 hazardous substance in excess of the concentrations which satisfy  
14 the requirements of section 20120a(1)(a) or (17) OR THE CLEANUP  
15 CRITERIA FOR UNRESTRICTED RESIDENTIAL USE UNDER PART 213 has been  
16 released, deposited, disposed of, or otherwise comes to be  
17 located. Facility does not include any area, place, or property  
18 at which response activities have been completed which satisfy  
19 the cleanup criteria for the residential category provided for in  
20 section 20120a(1)(a) and (17) OR AT WHICH CORRECTIVE ACTION HAS  
21 BEEN COMPLETED UNDER PART 213 WHICH SATISFIES THE CLEANUP CRI-  
22 TERIA FOR UNRESTRICTED RESIDENTIAL USE.

23 (m) "Feasibility study" means a process for developing,  
24 evaluating, and selecting appropriate response activities.

25 (n) "Foreclosure" means possession of a property by a lender  
26 on which it has foreclosed on a security interest or the

1 expiration of a lawful redemption period, whichever occurs  
2 first.

3 (o) "Free product" means a hazardous substance in a liquid  
4 phase equal to or greater than 1/8 inch of measurable thickness  
5 that is not dissolved in water and that has been released into  
6 the environment.

7 (p) "Fund" means the environmental response fund established  
8 in section 20108.

9 (q) "Hazardous substance" means 1 or more of the following,  
10 but does not include fruit, vegetable, or field crop residuals or  
11 processing by-products, or aquatic plants, that are applied to  
12 the land for an agricultural use or for use as an animal feed, if  
13 the use is consistent with generally accepted agricultural man-  
14 agement practices developed pursuant to the Michigan right to  
15 farm act, Act No. 93 of the Public Acts of 1981, being sections  
16 286.471 to 286.474 of the Michigan Compiled Laws:

17 (i) Any substance that the department demonstrates, on a  
18 case by case basis, poses an unacceptable risk to the public  
19 health, safety, or welfare, or the environment, considering the  
20 fate of the material, dose-response, toxicity, or adverse impact  
21 on natural resources.

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

25 (iii) Hazardous waste as defined in part 111.

26 (iv) ~~Petroleum~~ A REGULATED SUBSTANCE as described in  
27 part 213.

1       (r) "Interim response activity" means the cleanup or removal  
2 of a released hazardous substance or the taking of other actions,  
3 prior to the implementation of a remedial action, as may be nec-  
4 essary to prevent, minimize, or mitigate injury to the public  
5 health, safety, or welfare, or to the environment. Interim  
6 response activity also includes, but is not limited to, measures  
7 to limit access, replacement of water supplies, and temporary  
8 relocation of people as determined to be necessary by the  
9 department. In addition, interim response activity means the  
10 taking of other actions as may be necessary to prevent, minimize,  
11 or mitigate a threatened release.

12       (s) "Lender" means any of the following:

13       (i) A state or nationally chartered bank.

14       (ii) A state or federally chartered savings and loan associ-  
15 ation or savings bank.

16       (iii) A state or federally chartered credit union.

17       (iv) Any other state or federally chartered lending institu-  
18 tion or regulated affiliate or regulated subsidiary of any entity  
19 listed in this subparagraph or subparagraphs (i) to (iii).

20       (v) An insurance company authorized to do business in this  
21 state pursuant to the insurance code of 1956, Act No. 218 of the  
22 Public Acts of 1956, being sections 500.100 to 500.8302 of the  
23 Michigan Compiled Laws.

24       (vi) A motor vehicle finance company subject to the motor  
25 vehicle finance act, Act No. 27 of the Extra Session of 1950,  
26 being sections 492.101 to 492.141 of the Michigan Compiled Laws,  
27 with net assets in excess of \$50,000,000.00.

(vii) A foreign bank.

(viii) A retirement fund regulated pursuant to state law or a pension fund regulated pursuant to federal law with net assets in excess of \$50,000,000.00.

(ix) A state or federal agency authorized by law to hold a security interest in real property or a local unit of government holding a reversionary interest in real property.

(x) A nonprofit tax exempt organization created to promote economic development in which a majority of the organization's assets are held by a local unit of government.

(xi) Any other person who loans money for the purchase of or improvement of real property.

(xii) Any person who retains or receives a security interest to service a debt or to secure a performance obligation.

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

(u) "Local unit of government" means a county, city, township, or village, an agency of a local unit of government, an authority or any other public body or entity created by or pursuant to state law. Local unit of government does not include the state or federal government or a state or federal agency.

(v) "Operator" means a person who is in control of or responsible for the operation of a facility. Operator does not include either of the following:

1       (i) A person who holds indicia of ownership primarily to  
2 protect the person's security interest in the facility, unless  
3 that person participates in the management of the facility as  
4 described in section 20101a.

5       (ii) A person who is acting as a fiduciary in compliance  
6 with section 20101b.

7       (w) "Owner" means a person who owns a facility. Owner does  
8 not include either of the following:

9       (i) A person who holds indicia of ownership primarily to  
10 protect the person's security interest in the facility, includ-  
11 ing, but not limited to, a vendor's interest under a recorded  
12 land contract, unless that person participates in the management  
13 of the facility as described in section 20101a.

14       (ii) A person who is acting as a fiduciary in compliance  
15 with section 20101b.

16       (x) "Permitted release" means 1 or more of the following:

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

19       (ii) A lawful and authorized discharge into a permitted  
20 waste treatment facility.

21       (iii) A federally permitted release as defined in the com-  
22 prehensive environmental response, compensation, and liability  
23 act of 1980, Public Law 96-510, 94 Stat. 2767.

24       (y) "Release" includes, but is not limited to, any spilling,  
25 leaking, pumping, pouring, emitting, emptying, discharging,  
26 injecting, escaping, leaching, dumping, or disposing of a  
27 hazardous substance into the environment, or the abandonment or



1 discarding of barrels, containers, and other closed receptacles  
2 containing a hazardous substance. Release does not include any  
3 of the following:

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

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

9 (iii) A release of source, by-product, or special nuclear  
10 material from a nuclear incident, as those terms are defined in  
11 the atomic energy act of 1954, chapter 1073, 68 Stat. 919, if the  
12 release is subject to requirements with respect to financial pro-  
13 tection established by the nuclear regulatory commission under  
14 section 170 of chapter 14 of title I of the atomic energy act of  
15 1954, chapter 1073, 71 Stat. 576, 42 U.S.C. 2210, or any release  
16 of source by-product or special nuclear material from any pro-  
17 cessing site designated under section 102(a)(1) of title I or  
18 302(a) of title III of the uranium mill tailings radiation con-  
19 trol act of 1978, Public Law 95-604, 42 U.S.C. 7912 and 7942.

20 (iv) If applied according to label directions and according  
21 to generally accepted agricultural and management practices, the  
22 application of a fertilizer, soil conditioner, agronomically  
23 applied manure, or pesticide, or fruit, vegetable, or field crop  
24 residuals or processing by-products, aquatic plants, or a combi-  
25 nation of these substances. As used in this subparagraph, fer-  
26 tilizer and soil conditioner have the meaning given to these

1 terms in part 85, and pesticide has the meaning given to that  
2 term in part 83.

3 (v) A release does not include fruits, vegetables, field  
4 crop processing by-products, or aquatic plants, that are applied  
5 to the land for an agricultural use or for use as an animal feed,  
6 if the use is consistent with generally accepted agricultural and  
7 management practices developed pursuant to the Michigan right to  
8 farm act, Act No. 93 of the Public Acts of 1981, being sections  
9 286.471 to 286.474 of the Michigan Compiled Laws.

10 (z) "Remedial action" includes, but is not limited to,  
11 cleanup, removal, containment, isolation, destruction, or treat-  
12 ment of a hazardous substance released or threatened to be  
13 released into the environment, monitoring, maintenance, or the  
14 taking of other actions that may be necessary to prevent, mini-  
15 mize, or mitigate injury to the public health, safety, or wel-  
16 fare, or to the environment.

17 (aa) "Remedial action plan" means a work plan for performing  
18 remedial action under this part.

19 (bb) "Response activity" means evaluation, interim response  
20 activity, remedial action, or the taking of other actions neces-  
21 sary to protect the public health, safety, or welfare, or the  
22 environment or the natural resources. Response activity also  
23 includes health assessments or health effect studies carried out  
24 under the supervision, or with the approval of, the department of  
25 public health and enforcement actions related to any response  
26 activity.

1 (cc) "Response activity costs" or "costs of response  
2 activity" means all costs incurred in taking or conducting a  
3 response activity, including enforcement costs.

4 (dd) "Security interest" means any interest, including a  
5 reversionary interest, in real property created or established  
6 for the purpose of securing a loan or other obligation. Security  
7 interests include, but are not limited to, mortgages, deeds of  
8 trusts, liens, and title pursuant to lease financing  
9 transactions. Security interests may also arise from transac-  
10 tions such as sale and leasebacks, conditional sales, installment  
11 sales, trust receipt transactions, certain assignments, factoring  
12 agreements, accounts receivable financing arrangements, consign-  
13 ments, or any other transaction in which evidence of title is  
14 created if the transaction creates or establishes an interest in  
15 real property for the purpose of securing a loan or other  
16 obligation.

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

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

22 (2) As used in this part, the phrase "a person who is  
23 liable" includes a person who is described as being subject to  
24 liability in section 20126. The phrase "a person who is liable"  
25 does not presume that liability has been adjudicated.

26 Sec. 20114a. (1) A person who, after ~~the effective date of~~  
27 ~~this section~~ JUNE 5, 1995, is responsible for an activity

1 causing a release in excess of the concentrations that satisfy  
2 the criteria established pursuant to section 20120a(1)(a) through  
3 (e), as appropriate for the use of the property, is subject to a  
4 civil fine as provided in this part unless a fine or penalty has  
5 already been imposed for the release under another part of this  
6 act. However, a civil fine shall not be imposed under this sec-  
7 tion against a person who made a good faith effort to prevent the  
8 release and to comply with the provisions of this part.

9 (2) THIS SECTION DOES NOT APPLY TO A RELEASE FROM AN UNDER-  
10 GROUND STORAGE TANK SYSTEM AS DEFINED IN PART 213.

11 SEC. 20115A. (1) NOTWITHSTANDING ANY OTHER PROVISION OF  
12 THIS PART, IF A RELEASE OR THREAT OF RELEASE AT A FACILITY IS  
13 SOLELY THE RESULT OF A RELEASE OR THREAT OF RELEASE FROM AN  
14 UNDERGROUND STORAGE TANK SYSTEM, THE RESPONSE ACTIVITIES IMPE-  
15 MENTED AT THE FACILITY SHALL BE THE CORRECTIVE ACTIONS REQUIRED  
16 UNDER PART 213, AND THE REQUIREMENTS OF SECTION 20114 SHALL NOT  
17 APPLY TO THAT RELEASE.

18 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, IF A  
19 RELEASE OR THREAT OF RELEASE AT A FACILITY IS NOT SOLELY THE  
20 RESULT OF A RELEASE OR THREAT OF RELEASE FROM AN UNDERGROUND  
21 STORAGE TANK SYSTEM, THE OWNER OR OPERATOR OF THE UNDERGROUND  
22 STORAGE TANK SYSTEM AS DEFINED IN PART 213 MAY CHOOSE TO CONDUCT  
23 CORRECTIVE ACTIONS OF THE RELEASE FROM THE UNDERGROUND STORAGE  
24 TANK SYSTEM PURSUANT TO PART 213, AND THE REQUIREMENTS OF  
25 SECTION 20114 SHALL NOT APPLY TO THAT RELEASE.

26 Sec. 20126. (1) Notwithstanding any other provision or rule  
27 of law and except as provided in subsections (2), (3), (4), and

1 (5) and section 20128, the following persons are liable under  
2 this part:

3 (a) The owner or operator of a facility if the owner or  
4 operator is responsible for an activity causing a release or  
5 threat of release.

6 (b) The owner or operator of a facility at the time of dis-  
7 posal of a hazardous substance if the owner or operator is  
8 responsible for an activity causing a release or threat of  
9 release.

10 (c) An owner or operator of a facility who becomes an owner  
11 or operator on or after ~~the effective date of the 1995 amend-~~  
12 ~~ments to this section~~ JUNE 5, 1995, unless the owner or operator  
13 complies with both of the following:

14 (i) A baseline environmental assessment is conducted prior  
15 to or within 45 days after the earlier of the date of purchase,  
16 occupancy, or foreclosure. For purposes of this section, access-  
17 ing property to conduct a baseline environmental assessment does  
18 not constitute occupancy.

19 (ii) The owner or operator discloses the results of a base-  
20 line environmental assessment to the department and subsequent  
21 purchaser or transferee if the baseline environmental assessment  
22 confirms that the property is a facility.

23 (d) A person who by contract, agreement, or otherwise  
24 arranged for disposal or treatment, or arranged with a trans-  
25 porter for transport for disposal or treatment, of a hazardous  
26 substance owned or possessed by the person, by any other person,  
27 at a facility owned or operated by another person and containing

1 the hazardous substance. This subdivision does not include  
2 either of the following:

3       (i) A person who arranges the sale or transport of a second-  
4 ary material for use in producing a new product. As used in this  
5 subparagraph, secondary material means scrap metal, paper, plas-  
6 tic, glass, textiles, or rubber, which has demonstrated reuse or  
7 recycling potential and has been separated or removed from the  
8 solid waste stream for reuse or recycling, whether or not subse-  
9 quent separation and processing is required, if substantial  
10 amounts of the material are consistently used in the manufacture  
11 of products which may otherwise be produced from a raw or virgin  
12 material.

13       (ii) A person who arranges the lawful transport or disposal  
14 of any product or container commonly used in a residential house-  
15 hold, which is in a quantity commonly used in a residential  
16 household, and which was used in the person's residential  
17 household.

18       (e) A person who accepts or accepted any hazardous substance  
19 for transport to a facility selected by that person.

20       (f) The estate or trust of a person described in  
21 subdivisions (a) to (e).

22       (2) Subject to section 20107a, an owner or operator who com-  
23 plies with subsection (1)(c) is not liable for contamination  
24 existing at the facility at the earlier of the date of purchase,  
25 occupancy, or foreclosure, unless the person is responsible for  
26 an activity causing the contamination existing at the facility.  
27 Subsection (1)(c) does not alter a person's liability with regard

1 to a subsequent release or threat of release at a facility if the  
2 person is responsible for an activity causing the subsequent  
3 release or threat of release.

4 (3) Notwithstanding subsection (1), the following persons  
5 are not liable under this part unless the person is responsible  
6 for an activity causing a release at the facility:

7 (a) The state or a local unit of government that acquired  
8 ownership or control of a facility involuntarily through bank-  
9 ruptcy, tax delinquency, abandonment, a transfer from a lender  
10 pursuant to subsection (7), or other circumstances in which the  
11 government involuntarily acquires title or control by virtue of  
12 its governmental function or as provided in this part, a local  
13 unit of government to which ownership or control of a facility is  
14 transferred by the state or by another local unit of government  
15 that is not liable under subsection (1), or the state or a local  
16 unit of government that acquired ownership or control of a facil-  
17 ity by seizure, receivership, or forfeiture pursuant to the oper-  
18 ation of law or by court order.

19 (b) A state or local unit of government that holds or  
20 acquires an easement interest in a facility, holds or acquires an  
21 interest in a facility by dedication in a plat, or by dedication  
22 pursuant to Act No. 283 of the Public Acts of 1909, being sec-  
23 tions 220.1 to 239.6 of the Michigan Compiled Laws, or otherwise  
24 holds or acquires an interest in a facility for a transportation  
25 or utility corridor or public right of way.

26 (c) A person who holds an easement interest in a facility or  
27 holds a utility franchise to provide service, for the purpose of

1 conveying or providing goods or services, including, but not  
2 limited to, utilities, sewers, roads, railways, and pipelines; or  
3 a person that acquires access through an easement.

4 (d) A person who owns severed subsurface mineral rights or  
5 severed subsurface formations or who leases subsurface mineral  
6 rights or formations.

7 (e) The state or a local unit of government that leases  
8 property to a person if the state or the local unit of government  
9 is not liable under this part for environmental contamination at  
10 the property.

11 (f) A person who owns or occupies residential real property  
12 if hazardous substance use at the property is consistent with  
13 residential use.

14 (g) A person who acquires a facility as a result of the  
15 death of the prior owner or operator of the facility, whether by  
16 inheritance, devise, or transfer from an inter vivos or testamen-  
17 tary trust.

18 (h) A person who did not know and had no reason to know that  
19 the property was a facility. To establish that the person did  
20 not know and did not have a reason to know that the property was  
21 a facility, the person shall have undertaken at the time of  
22 acquisition all appropriate inquiry into the previous ownership  
23 and uses of the property consistent with good commercial or cus-  
24 tomary practice. A determination of liability under this section  
25 shall take into account any specialized knowledge or experience  
26 on the part of the person, the relationship of the purchase price  
27 to the value of the property if uncontaminated by a hazardous



1 substance, commonly known or reasonably ascertainable information  
2 about the property, the obviousness of the presence or likely  
3 presence of a release or threat of release at the property, and  
4 the ability to detect a release or threat of release by appropri-  
5 ate inspection.

6 (i) A utility performing normal construction, maintenance,  
7 and repair activities in the normal course of its utility service  
8 business. This subsection does not apply to property owned by  
9 the utility.

10 (j) A lessee who uses property for a retail, office, or com-  
11 mercial purpose.

12 (4) Notwithstanding subsection (1), the following persons  
13 are not liable under this part:

14 ~~(a) The owner or operator of an underground storage tank~~  
15 ~~system or the property on which an underground storage tank~~  
16 ~~system is located, as defined in part 213, from which there is a~~  
17 ~~release or threat of release if the release or threat of release~~  
18 ~~is solely from an underground storage tank system and is subject~~  
19 ~~to corrective action under part 213. If the release at a facil-~~  
20 ~~ity is not solely the result of a release or threat of release~~  
21 ~~from an underground storage tank system, the owner or operator of~~  
22 ~~the underground storage tank system or the property on which the~~  
23 ~~underground storage tank system is located may choose to conduct~~  
24 ~~corrective actions of the release from the underground storage~~  
25 ~~tank system pursuant to part 213.~~

26 (A) ~~(b)~~ The owner or operator of a hazardous waste  
27 treatment, storage, or disposal facility regulated pursuant to

1 part 111 from which there is a release or threat of release  
2 solely from the treatment, storage, or disposal facility, or a  
3 waste management unit at the facility and the release or threat  
4 of release is subject to corrective action under part 111.

5 (B) ~~(c)~~ A lender that engages in or conducts a lawful  
6 marshalling or liquidation of personal property if the lender  
7 does not cause or contribute to the environmental contamination.  
8 This includes holding a sale of personal property on a portion of  
9 the facility.

10 (C) ~~(d)~~ The owner or operator of property onto which con-  
11 tamination has migrated unless that person is responsible for an  
12 activity causing the release that is the source of the  
13 contamination.

14 (D) ~~(e)~~ A person who owns or operates a facility in which  
15 the release or threat of release was caused solely by 1 or more  
16 of the following:

17 (i) An act of God.

18 (ii) An act of war.

19 (iii) An act or omission of a third party other than an  
20 employee or agent of the person or a person in a contractual  
21 relationship existing either directly or indirectly with a person  
22 who is liable under this section.

23 (5) Notwithstanding any other provision of this part, the  
24 state or a local unit of government or a lender who has not par-  
25 ticipated in the management of the facility is not liable under  
26 this part for costs or damages as a result of response activity  
27 taken in response to a release or threat of release. For a

1 lender, this subsection applies only to response activity  
2 undertaken prior to foreclosure. This subsection does not pre-  
3 clude liability for costs or damages as a result of gross negli-  
4 gence, including reckless, willful, or wanton misconduct, or  
5 intentional misconduct by the state or local unit of government.

6 (6) In establishing liability under this section, the  
7 department bears the burden of proof. If the department proves a  
8 prima facie case against a person, the person shall bear the  
9 burden of showing by a preponderance of the evidence that he or  
10 she is not liable under this section.

11 (7) A lender that is not responsible for an activity causing  
12 a release at a facility that establishes that it has met the  
13 requirements of subsection (1)(c)(i) and (ii) with respect to  
14 that facility may immediately transfer to the state the property  
15 on which there has been a release or a threat of a release if the  
16 lender complies with all of the following:

17 (a) Within 9 months following foreclosure and for a period  
18 of at least 120 days, the lender either lists the facility with a  
19 broker, dealer, or agent who deals with the type of property in  
20 question, or advertises the facility as being for sale or dispo-  
21 sition on at least a monthly basis in either a real estate publi-  
22 cation, a trade or other publication suitable for the facility in  
23 question, or a newspaper of general circulation of over 10,000  
24 covering the area where the property is located.

25 (b) The lender has taken reasonable care in maintaining and  
26 preserving the real estate and permanent fixtures.

1 (c) The lender provides to the department all environmental  
2 information related to the facility that is available to the  
3 lender.

4 (d) If the department has issued an order pursuant to sec-  
5 tion 20119, the lender has complied with the order to the  
6 department's satisfaction.

7 (e) If conditions on the property pose a threat of fire or  
8 explosion or present an imminent hazard through direct contact  
9 with hazardous substances, the lender has undertaken appropriate  
10 response activities to abate the threat or hazard.

11 (8) The department shall establish minimum technical stan-  
12 dards for baseline environmental assessments conducted under this  
13 section in guidelines pursuant to the administrative procedures  
14 act of 1969, Act No. 306 of the Public Acts of 1969, being sec-  
15 tions 24.201 to 24.328 of the Michigan Compiled Laws.

16 (9) NOTWITHSTANDING SUBSECTION (1)(C), IF THE OWNER OR OPER-  
17 ATOR OF THE FACILITY BECAME THE OWNER OR OPERATOR OF THE FACILITY  
18 PRIOR TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
19 SUBSECTION, AND THE FACILITY CONTAINS AN UNDERGROUND STORAGE TANK  
20 SYSTEM AS DEFINED IN PART 213, THAT OWNER OR OPERATOR IS LIABLE  
21 UNDER THIS PART ONLY IF THE OWNER OR OPERATOR IS RESPONSIBLE FOR  
22 AN ACTIVITY CAUSING A RELEASE OR THREAT OF RELEASE.

23 Section 2. This amendatory act shall not take effect unless  
24 Senate Bill No. \_\_\_\_\_ or House Bill No. 5381 (request  
25 no. 06388'95) of the 88th Legislature is enacted into law.