

SENATE BILL NO. 550

April 28, 1999, Introduced by Senators SIKKEMA and PETERS and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 20126 (MCL 324.20126), as amended by 1996 PA 115.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20126. (1) Notwithstanding any other provision or rule
2 of law and except as provided in subsections (2), (3), (4), and
3 (5) and section 20128, the following persons are liable under
4 this part:

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

8 (b) The owner or operator of a facility at the time of
9 disposal of a hazardous substance if the owner or operator is

1 responsible for an activity causing a release or threat of
2 release.

3 (c) An owner or operator of a facility who becomes an owner
4 or operator on or after June 5, 1995, unless the owner or opera-
5 tor complies with both of the following:

6 (i) A baseline environmental assessment is conducted prior
7 to or within 45 days after the earlier of the date of purchase,
8 occupancy, or foreclosure. For purposes of this section, access-
9 ing property to conduct a baseline environmental assessment does
10 not constitute occupancy.

11 (ii) The owner or operator discloses the results of a base-
12 line environmental assessment to the department and subsequent
13 purchaser or transferee if the baseline environmental assessment
14 confirms that the property is a facility.

15 (d) A person who by contract, agreement, or otherwise
16 arranged for disposal or treatment, or arranged with a trans-
17 porter for transport for disposal or treatment, of a hazardous
18 substance owned or possessed by the person, by any other person,
19 at a facility owned or operated by another person and containing
20 the hazardous substance. This subdivision does not include
21 either of the following:

22 (i) A person who arranges the sale or transport of a second-
23 ary material for use in producing a new product. As used in this
24 subparagraph, "secondary material" means scrap metal, paper,
25 plastic, glass, textiles, or rubber, INCLUDING ANY HAZARDOUS SUB-
26 STANCES THAT ACTUALLY COMPRISE THE SCRAP METAL, PAPER, PLASTIC,

1 GLASS, TEXTILES, OR RUBBER, which MEETS ALL OF THE FOLLOWING
2 REQUIREMENTS:

3 (A) THE MATERIAL has demonstrated reuse or recycling poten-
4 tial and has been separated or removed from the solid waste
5 stream for reuse or recycling, whether or not subsequent separa-
6 tion and processing is required. ~~, if substantial~~

7 (B) ANY SEPARATION, REMOVAL, OR PROCESSING OF THE MATERIAL
8 COMPLIES WITH APPLICABLE LAW.

9 (C) THE MATERIAL AND THE BY-PRODUCTS RESULTING FROM ANY SEP-
10 ARATION, REMOVAL, OR PROCESSING OF THE MATERIAL ARE MANAGED IN
11 COMPLIANCE WITH APPLICABLE LAW.

12 (D) SUBSTANTIAL amounts of the material are consistently
13 used in the manufacture of products which may otherwise be
14 produced from a raw or virgin material.

15 (E) THE MATERIAL DOES NOT INCLUDE ANY HAZARDOUS SUBSTANCE
16 PRESENT ON, OR PRESENT IN A CONTAINER MADE OF, THE SCRAP METAL,
17 PAPER, PLASTIC, GLASS, TEXTILES, OR RUBBER IF THE HAZARDOUS SUB-
18 STANCE IS THE SUBJECT OF A RELEASE OR THREAT OF RELEASE AT A
19 FACILITY.

20 (ii) A person who arranges the lawful transport or disposal
21 of any product or container commonly used in a residential house-
22 hold, which is in a quantity commonly used in a residential
23 household, and which was used in the person's residential
24 household.

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

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

3 (2) Subject to section 20107a, an owner or operator who com-
4 plies with subsection (1)(c) is not liable for contamination
5 existing at the facility at the earlier of the date of purchase,
6 occupancy, or foreclosure, unless the person is responsible for
7 an activity causing the contamination existing at the facility.
8 Subsection (1)(c) does not alter a person's liability with regard
9 to a subsequent release or threat of release at a facility if the
10 person is responsible for an activity causing the subsequent
11 release or threat of release.

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

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

1 (b) A state or local unit of government that holds or
2 acquires an easement interest in a facility, holds or acquires an
3 interest in a facility by dedication in a plat, or by dedication
4 pursuant to ~~Act No. 283 of the Public Acts of 1909, being sec-~~
5 ~~tions 220.1 to 239.6 of the Michigan Compiled Laws~~ 1909 PA 283,
6 MCL 220.1 TO 239.6, or otherwise holds or acquires an interest in
7 a facility for a transportation or utility corridor or public
8 right of way.

9 (c) A person who holds an easement interest in a facility or
10 holds a utility franchise to provide service, for the purpose of
11 conveying or providing goods or services, including, but not
12 limited to, utilities, sewers, roads, railways, and pipelines; or
13 a person that acquires access through an easement.

14 (d) A person who owns severed subsurface mineral rights or
15 severed subsurface formations or who leases subsurface mineral
16 rights or formations.

17 (e) The state or a local unit of government that leases
18 property to a person if the state or the local unit of government
19 is not liable under this part for environmental contamination at
20 the property.

21 (f) A person who owns or occupies residential real property
22 if hazardous substance use at the property is consistent with
23 residential use.

24 (g) A person who acquires a facility as a result of the
25 death of the prior owner or operator of the facility, whether by
26 inheritance, devise, or transfer from an inter vivos or
27 testamentary trust.

1 (h) A person who did not know and had no reason to know that
2 the property was a facility. To establish that the person did
3 not know and did not have a reason to know that the property was
4 a facility, the person shall have undertaken at the time of
5 acquisition all appropriate inquiry into the previous ownership
6 and uses of the property consistent with good commercial or cus-
7 tomary practice. A determination of liability under this section
8 shall take into account any specialized knowledge or experience
9 on the part of the person, the relationship of the purchase price
10 to the value of the property if uncontaminated by a hazardous
11 substance, commonly known or reasonably ascertainable information
12 about the property, the obviousness of the presence or likely
13 presence of a release or threat of release at the property, and
14 the ability to detect a release or threat of release by appropri-
15 ate inspection.

16 (i) A utility performing normal construction, maintenance,
17 and repair activities in the normal course of its utility service
18 business. This subsection does not apply to property owned by
19 the utility.

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

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

24 (a) The owner or operator of a hazardous waste treatment,
25 storage, or disposal facility regulated pursuant to part 111 from
26 which there is a release or threat of release solely from the
27 treatment, storage, or disposal facility, or a waste management

1 unit at the facility and the release or threat of release is
2 subject to corrective action under part 111.

3 (b) A lender that engages in or conducts a lawful marshal-
4 ling or liquidation of personal property if the lender does not
5 cause or contribute to the environmental contamination. This
6 includes holding a sale of personal property on a portion of the
7 facility.

8 (c) The owner or operator of property onto which contamina-
9 tion has migrated unless that person is responsible for an activ-
10 ity causing the release that is the source of the contamination.

11 (d) A person who owns or operates a facility in which the
12 release or threat of release was caused solely by 1 or more of
13 the following:

14 (i) An act of God.

15 (ii) An act of war.

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

20 (5) Notwithstanding any other provision of this part, the
21 state or a local unit of government or a lender who has not par-
22 ticipated in the management of the facility is not liable under
23 this part for costs or damages as a result of response activity
24 taken in response to a release or threat of release. For a
25 lender, this subsection applies only to response activity under-
26 taken prior to foreclosure. This subsection does not preclude
27 liability for costs or damages as a result of gross negligence,

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

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

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

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

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

24 (c) The lender provides to the department all environmental
25 information related to the facility that is available to the
26 lender.

1 (d) If the department has issued an order pursuant to
2 section 20119, the lender has complied with the order to the
3 department's satisfaction.

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

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

14 (9) Notwithstanding subsection (1)(c), if the owner or oper-
15 ator of the facility became the owner or operator of the facility
16 on or after June 5, 1995 and prior to ~~the effective date of the~~
17 ~~amendatory act that added this subsection,~~ MARCH 6, 1996, and
18 the facility contains an underground storage tank system as
19 defined in part 213, that owner or operator is liable under this
20 part only if the owner or operator is responsible for an activity
21 causing a release or threat of release.

22 Enacting section 1. The changes made by this amendatory act
23 are intended as clarifications and apply retroactively.