

HOUSE BILL No. 5669

December 9, 2009, Introduced by Rep. Switalski and referred to the Committee on Judiciary.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 20101b (MCL 324.20101b), as amended by 2000 PA
368.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20101b. (1) A lender or other person who has not
2 participated in the management of a property as described in
3 section 20101a before assuming ownership or control of the property
4 as a fiduciary, as defined by section 1104 of the estates and
5 protected individuals code, 1998 PA 386, MCL 700.1104, or in a
6 representative capacity for a disabled person under ~~section 5501 of~~
7 ~~the estates and protected individuals code, 1998 PA 386, MCL~~
8 ~~700.5501,~~ **A DURABLE POWER OF ATTORNEY AS DESCRIBED IN SECTION 102**
9 **OF THE UNIFORM POWER OF ATTORNEY ACT** and ~~that~~ **WHO** is acting or has

1 acted in a capacity permitted by the estates and protected
2 individuals code, 1998 PA 386, MCL 700.1101 to ~~700.8102~~ **700.8206**,
3 is not personally liable as an owner or operator of the property
4 under this part. This subsection does not do either of the
5 following:

6 (a) Relieve the fiduciary from personal liability as the
7 result of the fiduciary's assumption of personal liability, or
8 negligence, gross negligence, or reckless, willful, or intentional
9 misconduct.

10 (b) Prevent a claim against the assets that are part of or all
11 of the estate or trust that contains the facility; another estate
12 or trust of the decedent, grantor, ward, or other person whose
13 estate or trust contains the facility that is administered by the
14 lender or other person; or another estate or trust of the decedent,
15 grantor, ward, or other person whose estate or trust contains the
16 facility. Such a claim may be asserted against the fiduciary in its
17 representative capacity, whether or not the fiduciary is personally
18 liable.

19 (2) A lender that has not participated in the management of a
20 property as described in section 20101a before assuming ownership
21 or control of the property in a fiduciary capacity ~~—and~~ **THAT**,
22 under a fiduciary agreement entered into on or before August 1,
23 1990, owns or controls the property in a fiduciary capacity ~~that is~~
24 authorized by the banking code of 1999, 1999 PA 276, MCL 487.11101
25 to 487.15105, or the national bank act, chapter 106, 13 Stat. 99,
26 is not personally liable as an owner or operator of the property
27 under this part. This subsection does not do either of the

1 following:

2 (a) Relieve the fiduciary from personal liability as the
3 result of the fiduciary's assumption of personal liability,
4 negligence, gross negligence, or reckless, willful, or intentional
5 misconduct.

6 (b) Prevent a claim against the assets that are part of or all
7 of the estate or trust that contains the facility; another estate
8 or trust of the decedent, grantor, ward, or other person whose
9 estate or trust contains the facility that is administered by the
10 lender; or another estate or trust of the decedent, grantor, ward,
11 or other person whose estate or trust contains the facility. Such a
12 claim may be asserted against the fiduciary in its representative
13 capacity, whether or not the fiduciary is personally liable.

14 (3) A lender that has not participated in the management of a
15 property as described in section 20101a before assuming ownership
16 or control of the property in a fiduciary capacity, ~~and~~ **THAT**, under
17 a fiduciary agreement entered into after August 1, 1990, owns or
18 controls the property in a fiduciary capacity ~~that is~~ authorized by
19 the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105,
20 or the national bank act, chapter 106, 13 Stat. 99, that has served
21 only in an administrative, custodial, or financial capacity with
22 respect to the property, and **THAT** has not exercised sufficient
23 involvement to control the owner's or operator's handling of a
24 hazardous substance ~~—~~ is not personally liable as an owner or
25 operator of the property under this part. This subsection does not
26 do either of the following:

27 (a) Relieve the fiduciary from personal liability as the

1 result of the fiduciary's assumption of personal liability,
2 negligence, gross negligence, or reckless, willful, or intentional
3 misconduct.

4 (b) Prevent a claim against the assets that are part of or all
5 of the estate or trust that contains the facility; another estate
6 or trust of the decedent, grantor, ward, or other person whose
7 estate or trust contains the facility that is administered by the
8 lender; or another estate or trust of the decedent, grantor, ward,
9 or other person whose estate or trust contains the facility. Such a
10 claim may be asserted against the fiduciary in its representative
11 capacity, whether or not the fiduciary is personally liable.

12 Enacting section 1. This amendatory act does not take effect
13 unless Senate Bill No.____ (request no. 01651'09) or House Bill No.
14 5196 of the 95th Legislature is enacted into law.