

**SUBSTITUTE FOR
SENATE BILL NO. 550**

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~~ ANY of the following:

22 (i) A person who, ON OR AFTER JUNE 5, 1995, arranges FOR the
23 sale or transport of a secondary material for use in producing a
24 new product. As used in this subparagraph, secondary material
25 means scrap metal, paper, plastic, glass, textiles, or rubber,
26 which has demonstrated reuse or recycling potential and has been
27 separated or removed from the solid waste stream for reuse or

1 recycling, whether or not subsequent separation and processing is
2 required, if substantial amounts of the material are consistently
3 used in the manufacture of products which may otherwise be
4 produced from a raw or virgin material.

(ii) A PERSON WHO, PRIOR TO JUNE 5, 1995, ARRANGES FOR THE SALE
OR TRANSPORT OF A SECONDARY MATERIAL FOR USE IN PRODUCING A NEW
PRODUCT UNLESS THE STATE HAS INCURRED RESPONSE ACTIVITY COSTS
ASSOCIATED WITH THESE SECONDARY MATERIALS PRIOR TO THE EFFECTIVE
DATE OF THE 1999 AMENDMENTS TO THIS SECTION. AS USED IN THIS
SUBPARAGRAPH, SECONDARY MATERIAL MEANS SCRAP METAL, PAPER, PLASTIC,
GLASS, TEXTILES, OR RUBBER, WHICH HAS DEMONSTRATED REUSE OR
RECYCLING POTENTIAL AND HAS BEEN SEPARATED OR REMOVED FROM THE SOLID
WASTE STREAM FOR REUSE OR RECYCLING, WHETHER OR NOT SUBSEQUENT
SEPARATION AND PROCESSING IS REQUIRED, IF SUBSTANTIAL AMOUNTS OF THE
MATERIAL ARE CONSISTENTLY USED IN THE MANUFACTURE OF PRODUCTS WHICH
MAY OTHERWISE BE PRODUCED FROM A RAW OR VIRGIN MATERIAL.

5 ~~(ii)~~ (iii) A person who arranges the lawful transport or
disposal

6 of any product or container commonly used in a residential house-
7 hold, which is in a quantity commonly used in a residential
8 household, and which was used in the person's residential
9 household.

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

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

14 (2) Subject to section 20107a, an owner or operator who com-
15 plies with subsection (1)(c) is not liable for contamination
16 existing at the facility at the earlier of the date of purchase,
17 occupancy, or foreclosure, unless the person is responsible for
18 an activity causing the contamination existing at the facility.
19 Subsection (1)(c) does not alter a person's liability with regard
20 to a subsequent release or threat of release at a facility if the
21 person is responsible for an activity causing the subsequent
22 release or threat of release.

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

26 (a) The state or a local unit of government that acquired
27 ownership or control of a facility involuntarily through

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1 bankruptcy, tax delinquency, abandonment, a transfer from a
2 lender pursuant to subsection (7), or other circumstances in
3 which the government involuntarily acquires title or control by
4 virtue of its governmental function or as provided in this part,
5 a local unit of government to which ownership or control of a
6 facility is transferred by the state or by another local unit of
7 government that is not liable under subsection (1), or the state
8 or a local unit of government that acquired ownership or control
9 of a facility by seizure, receivership, or forfeiture pursuant to
10 the operation of law or by court order.

11 (b) A state or local unit of government that holds or
12 acquires an easement interest in a facility, holds or acquires an
13 interest in a facility by dedication in a plat, or by dedication
14 pursuant to ~~Act No. 283 of the Public Acts of 1909, being sec-~~
15 ~~tions 220.1 to 239.6 of the Michigan Compiled Laws~~ 1909 PA 283,
16 MCL 220.1 TO 239.6, or otherwise holds or acquires an interest in
17 a facility for a transportation or utility corridor or public
18 right of way.

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

24 (d) A person who owns severed subsurface mineral rights or
25 severed subsurface formations or who leases subsurface mineral
26 rights or formations.

1 (e) The state or a local unit of government that leases
2 property to a person if the state or the local unit of government
3 is not liable under this part for environmental contamination at
4 the property.

5 (f) A person who owns or occupies residential real property
6 if hazardous substance use at the property is consistent with
7 residential use.

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

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

1 (i) A utility performing normal construction, maintenance,
2 and repair activities in the normal course of its utility service
3 business. This subsection does not apply to property owned by
4 the utility.

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

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

9 (a) The owner or operator of a hazardous waste treatment,
10 storage, or disposal facility regulated pursuant to part 111 from
11 which there is a release or threat of release solely from the
12 treatment, storage, or disposal facility, or a waste management
13 unit at the facility and the release or threat of release is
14 subject to corrective action under part 111.

15 (b) A lender that engages in or conducts a lawful marshal-
16 ling or liquidation of personal property if the lender does not
17 cause or contribute to the environmental contamination. This
18 includes holding a sale of personal property on a portion of the
19 facility.

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

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

26 (i) An act of God.

1 (ii) An act of war.

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

6 (5) Notwithstanding any other provision of this part, the
7 state or a local unit of government or a lender who has not par-
8 ticipated in the management of the facility is not liable under
9 this part for costs or damages as a result of response activity
10 taken in response to a release or threat of release. For a
11 lender, this subsection applies only to response activity under-
12 taken prior to foreclosure. This subsection does not preclude
13 liability for costs or damages as a result of gross negligence,
14 including reckless, willful, or wanton misconduct, or intentional
15 misconduct by the state or local unit of government.

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

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

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1 (a) Within 9 months following foreclosure and for a period
2 of at least 120 days, the lender either lists the facility with a
3 broker, dealer, or agent who deals with the type of property in
4 question, or advertises the facility as being for sale or dispo-
5 sition on at least a monthly basis in either a real estate publi-
6 cation, a trade or other publication suitable for the facility in
7 question, or a newspaper of general circulation of over 10,000
8 covering the area where the property is located.

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

11 (c) The lender provides to the department all environmental
12 information related to the facility that is available to the
13 lender.

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

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

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

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1 (9) Notwithstanding subsection (1)(c), if the owner or
2 operator of the facility became the owner or operator of the
3 facility on or after June 5, 1995 and prior to ~~the effective~~
4 ~~date of the amendatory act that added this subsection,~~ MARCH 6,
5 1996, and the facility contains an underground storage tank
6 system as defined in part 213, that owner or operator is liable
7 under this part only if the owner or operator is responsible for
8 an activity causing a release or threat of release.