

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 746

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 20101b (MCL 324.20101b), as added by 1995 PA
71.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20101b. (1) A lender or other person who has not par-
2 ticipated in the management of a property as described in
3 section 20101a ~~prior to~~ BEFORE assuming ownership or control of
4 the property as a fiduciary, as defined by section 5 of the
5 revised probate code, ~~Act No. 642 of the Public Acts of 1978,~~
6 ~~being section 700.5 of the Michigan Compiled Laws~~ 1978 PA 642,
7 MCL 700.5, or in a representative capacity for a disabled person
8 under section 495 of ~~Act No. 642 of the Public Acts of 1978,~~
9 ~~being section 700.495 of the Michigan Compiled Laws~~ THE REVISED
10 PROBATE CODE, 1978 PA 642, MCL 700.495, and that is acting or has

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1 acted in a capacity permitted by the revised probate code, ~~Act~~
2 ~~No. 642 of the Public Acts of 1978, being sections 700.1 to~~
3 ~~700.993 of the Michigan Compiled Laws~~ 1978 PA 642, MCL 700.1 TO
4 700.993, is not personally liable as an owner or operator of the
5 property under this part. This subsection does not do either of
6 the following:

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

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

20 (2) A lender that has not participated in the management of
21 a property as described in section 20101a prior to assuming
22 ownership or control of the property in a fiduciary capacity, and
23 under a fiduciary agreement entered into on or before August 1,
24 1990 owns or controls the property in a fiduciary capacity that
25 is authorized by the banking code of ~~1969, Act No. 319 of the~~
26 ~~Public Acts of 1969, being sections 487.301 to 487.598 of the~~
27 ~~Michigan Compiled Laws~~ 1999, 1999 PA 276, MCL 487.11101 TO

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1 487.15105, or the national bank act, chapter 106, 13 Stat. 99, is
2 not personally liable as an owner or operator of the property
3 under this part. This subsection does not do either of the
4 following:

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

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

18 (3) A lender that has not participated in the management of
19 a property as described in section 20101a prior to assuming
20 ownership or control of the property in a fiduciary capacity, and
21 ~~pursuant to~~ UNDER a fiduciary agreement entered into after
22 August 1, 1990 owns or controls the property in a fiduciary
23 capacity that is authorized by ~~Act No. 319 of the Public Acts of~~
24 ~~1969~~ THE BANKING CODE OF 1999, 1999 PA 276, MCL 487.11101 TO
25 487.15105, or the national bank act, chapter 106, 13 Stat. 99,
26 that has served only in an administrative, custodial, or
27 financial capacity with respect to the property, and has not

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1 exercised sufficient involvement to control the owner's or
2 operator's handling of a hazardous substance, is not personally
3 liable as an owner or operator of the property under this part.

4 This subsection does not do either of the following:

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

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