

SB 746, As Passed Senate, December 6, 2000

**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 amended by 2000
PA 65.

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 before assuming ownership or control of the prop-
4 erty as a fiduciary, as defined by section 1104 of the estates
5 and protected individuals code, 1998 PA 386, MCL 700.1104, or in
6 a representative capacity for a disabled person under section
7 5501 of the estates and protected individuals code, 1998 PA 386,
8 MCL 700.5501, and that is acting or has acted in a capacity
9 permitted by the estates and protected individuals code, 1998 PA
10 386, MCL 700.1101 to 700.8102, is not personally liable as an

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1 owner or operator of the property under this part. This
2 subsection does not do either of the following:

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

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

16 (2) A lender that has not participated in the management of
17 a property as described in section 20101a before assuming owner-
18 ship or control of the property in a fiduciary capacity, and
19 under a fiduciary agreement entered into on or before August 1,
20 1990 owns or controls the property in a fiduciary capacity that
21 is authorized by the banking code of ~~1969, 1969 PA 319, MCL~~
22 ~~487.301 to 487.598~~ 1999, 1999 PA 276, MCL 487.11101 TO
23 487.15105, or the national bank act, chapter 106, 13 Stat. 99, is
24 not personally liable as an owner or operator of the property
25 under this part. This subsection does not do either of the
26 following:

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

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

14 (3) A lender that has not participated in the management of
15 a property as described in section 20101a before assuming owner-
16 ship or control of the property in a fiduciary capacity, and
17 under a fiduciary agreement entered into after August 1, 1990
18 owns or controls the property in a fiduciary capacity that is
19 authorized by the banking code of ~~1969, 1969 PA 319, MCL 487.301~~
20 ~~to 487.598~~ 1999, 1999 PA 276, MCL 487.11101 TO 487.15105, or the
21 national bank act, chapter 106, 13 Stat. 99, that has served only
22 in an administrative, custodial, or financial capacity with
23 respect to the property, and has not exercised sufficient
24 involvement to control the owner's or operator's handling of a
25 hazardous substance, is not personally liable as an owner or
26 operator of the property under this part. This subsection does
27 not do either of the following:

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

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