

SENATE BILL NO. 746

September 28, 1999, Introduced by Senators MILLER, STEIL and SHUGARS and referred to the Committee on Banking and Financial Institutions.

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

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, MCL 487.11101 TO 487.15101, or the

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

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

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

17 (3) A lender that has not participated in the management of
18 a property as described in section 20101a prior to assuming
19 ownership or control of the property in a fiduciary capacity, and
20 ~~pursuant to~~ UNDER a fiduciary agreement entered into after
21 August 1, 1990 owns or controls the property in a fiduciary
22 capacity that is authorized by ~~Act No. 319 of the Public Acts of~~
23 ~~1969~~ THE BANKING CODE OF 1999, MCL 487.11101 TO 487.15101, or
24 the national bank act, chapter 106, 13 Stat. 99, that has served
25 only in an administrative, custodial, or financial capacity with
26 respect to the property, and has not exercised sufficient
27 involvement to control the owner's or operator's handling of a

1 hazardous substance, is not personally liable as an owner or
2 operator of the property under this part. This subsection does
3 not do either of the following:

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

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

17 Enacting section 1. This amendatory act does not take
18 effect unless Senate Bill No. 745

19 of the 90th Legislature is enacted into
20 law.