

HOUSE BILL NO. 5241

October 25, 2023, Introduced by Reps. McKinney, Morgan, Conlin, Edwards, Miller, Wilson, Paiz, Churches, Breen, Glanville, Tsernoglou, Hood, Steckloff, Hoskins, Arbit, MacDonell, Skaggs, Brixie, Hope, Mentzer, Neeley, Koleszar, Wegela, Brabec, Andrews, Young, Martus, Dievendorf, Weiss, Aiyash and Coffia and referred to the Committee on Natural Resources, Environment, Tourism and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20126 and 20140 (MCL 324.20126 and 324.20140), section 20126 as amended by 2014 PA 542 and section 20140 as amended by 2000 PA 254, and by adding section 20136.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20126. (1) Notwithstanding any other provision or rule of
2 law and except as provided in subsections (2), (3), (4), and (5)
3 and section 20128, the following persons are liable under this

1 part:

2 (a) The owner or operator of a facility if the owner or
3 operator is responsible for an activity causing a release or threat
4 of release.

5 (b) The owner or operator of a facility at the time of
6 disposal of a hazardous substance if the owner or operator is
7 responsible for an activity causing a release or threat of release.

8 (c) An owner or operator of a facility ~~who~~**that** becomes an
9 owner or operator on or after June 5, 1995, unless the owner or
10 operator complies with either of the following:

11 (i) A baseline environmental assessment is conducted ~~prior to~~
12 **before** or within 45 days after the earlier of the date of purchase,
13 occupancy, or foreclosure, and the owner or operator provides the
14 baseline environmental assessment to the department and subsequent
15 purchaser or transferee within 6 months after the earlier of the
16 date of purchase, occupancy, or foreclosure. For purposes of this
17 section, assessing property to conduct a baseline environmental
18 assessment does not constitute occupancy.

19 (ii) The owner or operator requests and receives from the
20 department a determination that its failure to comply with the time
21 frames in subparagraph (i) when conducting and submitting a baseline
22 environmental assessment was inconsequential.

23 (d) A person ~~who~~**that** by contract, agreement, or otherwise
24 arranged for disposal or treatment, or arranged with a transporter
25 for transport for disposal or treatment, of a hazardous substance
26 owned or possessed by the person, by any other person, at a
27 facility owned or operated by another person and containing the
28 hazardous substance. This subdivision does not include any of the
29 following:

1 (i) A person ~~who,~~**that**, on or after June 5, 1995, arranges for
2 the sale or transport of a secondary material for use in producing
3 a new product. As used in this subparagraph, ~~secondary material~~
4 **"secondary material"** means scrap metal, paper, plastic, glass,
5 textiles, or rubber, that has demonstrated reuse or recycling
6 potential and has been separated or removed from the solid waste
7 stream for reuse or recycling, whether or not subsequent separation
8 and processing is required, if substantial amounts of the material
9 are consistently used in the manufacture of products that may
10 otherwise be produced from a raw or virgin material.

11 (ii) A person ~~who,~~**prior to that, before** June 5, 1995, arranges
12 for the sale or transport of a secondary material for use in
13 producing a new product unless ~~the~~**this** state has incurred response
14 activity costs associated with these secondary materials ~~prior to~~
15 **before** December 17, 1999. As used in this subparagraph, ~~secondary~~
16 ~~material~~**"secondary material"** means scrap metal, paper, plastic,
17 glass, textiles, or rubber, that has demonstrated reuse or
18 recycling potential and has been separated or removed from the
19 solid waste stream for reuse or recycling, whether or not
20 subsequent separation and processing is required, if substantial
21 amounts of the material are consistently used in the manufacture of
22 products that may otherwise be produced from a raw or virgin
23 material.

24 (iii) A person ~~who~~**that** arranges the lawful transport or
25 disposal of any product or container that is commonly used in a
26 residential household, is in a quantity commonly used in a
27 residential household, and was used in the person's residential
28 household.

29 (iv) A person ~~who~~**that** stores or uses or arranges for the

1 storage or use of a beneficial use by-product or inert material in
2 compliance with part 115.

3 (e) A person ~~who~~**that** accepts or accepted any hazardous
4 substance for transport to a facility selected by that person.

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

7 (2) Subject to section 20107a, an owner or operator ~~who~~**that**
8 complies with subsection (1)(c) (i) and (ii) is not liable for
9 contamination existing at the facility at the earlier of the date
10 of purchase, occupancy, or foreclosure, unless the person is
11 responsible for an activity causing the contamination existing at
12 the facility. Subsection (1)(c) does not alter a person's liability
13 with regard to a subsequent release or threat of release at a
14 facility if the person is responsible for an activity causing the
15 subsequent release or threat of release.

16 (3) Notwithstanding subsection (1), the following persons are
17 not liable under this part with respect to contamination at a
18 facility resulting from a release or threat of release unless the
19 person is responsible for an activity causing that release or
20 threat of release:

21 (a) ~~The~~**This** state or a local unit of government that acquired
22 ownership or control of a facility involuntarily through
23 bankruptcy, tax delinquency, abandonment, or other circumstances in
24 which the government involuntarily acquires title or control by
25 virtue of its governmental function or as provided in this part; a
26 local unit of government to which ownership or control of a
27 facility is transferred by ~~the~~**this** state or by another local unit
28 of government that is not liable under subsection (1); or ~~the~~**this**
29 state or a local unit of government that acquired ownership or

1 control of a facility by seizure, receivership, or forfeiture
2 pursuant to the operation of law or by court order.

3 (b) A state or local unit of government that holds or acquires
4 an easement interest in a facility, holds or acquires an interest
5 in a facility by dedication in a plat, or by dedication pursuant to
6 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an
7 interest in a facility for a transportation or utility corridor,
8 including sewers, pipes, and pipelines, or public right of way.

9 (c) A person ~~who~~**that** holds an easement interest in a facility
10 or holds a utility franchise to provide service, for the purpose of
11 conveying or providing goods or services, including, but not
12 limited to, utilities, sewers, roads, railways, and pipelines; or a
13 person that acquires access through an easement.

14 (d) A person ~~who~~**that** owns severed subsurface mineral rights
15 or severed subsurface formations or ~~who~~**that** leases subsurface
16 mineral rights or formations.

17 (e) ~~The~~**This** state or a local unit of government that leases
18 property to a person if ~~the~~**this** state or the local unit of
19 government is not liable under this part for environmental
20 contamination at the property.

21 (f) A person ~~who~~**that** owns or occupies residential real
22 property if hazardous substance use at the property is consistent
23 with residential use.

24 (g) A person ~~who~~**that** acquires a facility as a result of the
25 death of the prior owner or operator of the facility, whether by
26 inheritance, devise, or transfer from an inter vivos or
27 testamentary trust.

28 (h) A person ~~who~~**that** did not know and had no reason to know
29 that the property was a facility. To establish that the person did

1 not know and did not have a reason to know that the property was a
 2 facility, the person shall have undertaken at the time of
 3 acquisition all appropriate inquiry into the previous ownership and
 4 uses of the property consistent with good commercial or customary
 5 practice. A determination of liability under this subdivision ~~shall~~
 6 **must** take into account any specialized knowledge or experience on
 7 the part of the person, the relationship of the purchase price to
 8 the value of the property if uncontaminated by a hazardous
 9 substance, commonly known or reasonable ascertainable information
 10 about the property, the obviousness of the presence or likely
 11 presence of a release or threat of release at the property, and the
 12 ability to detect a release or threat of release by appropriate
 13 inspection.

14 (i) A utility performing normal construction, maintenance, and
 15 repair activities in the normal course of its utility service
 16 business. This subdivision does not apply to property owned by the
 17 utility.

18 (j) A lessee ~~who~~**that** uses the leased property for a retail,
 19 office, or commercial purpose regardless of the level of the
 20 lessee's hazardous substance use.

21 (k) A person ~~who~~**that** holds a license, easement, or lease, or
 22 ~~who~~**that** otherwise occupies or operates property, for the purpose
 23 of siting, constructing, operating, or removing a wind energy
 24 conversion system or any component of a wind energy conversion
 25 system. As used in this subdivision, "wind energy conversion
 26 system" means that term as defined in section 13 of the clean ~~and~~
 27 renewable ~~energy~~ and ~~efficient~~ energy **waste reduction** act, 2008
 28 PA 295, MCL 460.1013.

29 (l) A person ~~who~~**that** owns or occupies a residential

1 condominium unit for both of the following:

2 (i) Contamination of the unit if hazardous substance use within
3 the unit is consistent with residential use.

4 (ii) Contamination of any general common element, limited
5 common element, or common area in which the person has an ownership
6 interest or right of occupation by reason of owning or occupying
7 the residential condominium unit.

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

10 (a) The owner or operator of property at or from which there
11 is a release or threat of release and the release or threat of
12 release is subject to corrective action under part 111 or is being
13 addressed as part of a corrective action under part 111. A
14 corrective action under part 111 may be implemented using processes
15 and cleanup criteria, as appropriate, under this part. However, a
16 release or threat of release that is subject to or that has been or
17 is being addressed through part 111 corrective action ~~shall~~**must**
18 not also be subject to remediation and department oversight under
19 this part.

20 (b) A lender that engages in or conducts a lawful marshalling
21 or liquidation of personal property if the lender does not cause or
22 contribute to the environmental contamination. This includes
23 holding a sale of personal property on a portion of the facility.

24 (c) The owner or operator of property onto which contamination
25 has migrated unless that person is responsible for an activity
26 causing the release that is the source of the contamination.

27 (d) A person ~~who~~**that** owns or operates a facility in which the
28 release or threat of release was caused solely by 1 or more of the
29 following:

1 (i) An act of God.

2 (ii) An act of war.

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

7 (e) Any person for environmental contamination addressed in a
8 no further action report that is approved by the department or is
9 considered approved under section 20114d. However, a person may be
10 liable under this part for the following:

11 (i) A subsequent release not addressed in the no further action
12 report if the person is otherwise liable under this part for that
13 release.

14 (ii) Environmental contamination that is not addressed in the
15 no further action report and for which the person is otherwise
16 liable under this part.

17 (iii) If the no further action report relies on land use or
18 resource use restrictions, an owner or operator ~~who~~**that** desires to
19 change those restrictions is responsible for any response
20 activities necessary to comply with this part for any land use or
21 resource use other than the land use or resource use that was the
22 basis for the no further action report.

23 (iv) If the no further action report relies on monitoring
24 necessary to ensure the effectiveness and integrity of the remedial
25 action, an owner or operator ~~who~~**that** is otherwise liable for
26 environmental contamination addressed in a no further action report
27 is liable under this part for additional response activities
28 necessary to address any potential exposure to the environmental
29 contamination demonstrated by the monitoring in excess of the

1 levels relied on in the no further action report.

2 (v) If the remedial actions that were the basis for the no
3 further action report fail to meet performance objectives that are
4 identified in the no further action report, an owner or operator
5 ~~who~~**that** is otherwise liable for environmental contamination
6 addressed in the no further action report is liable under this part
7 for response activities necessary to satisfy the performance
8 objectives or otherwise comply with this part.

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

19 (6) In establishing liability under this section, the
20 department bears the burden of proof.

21 (7) Notwithstanding subsection (1)(c), if the owner or
22 operator of the facility became the owner or operator of the
23 facility on or after June 5, 1995 and ~~prior to~~**before** March 6,
24 1996, and the facility contains an underground storage tank system
25 as **that term is** defined in part 213, that owner or operator is
26 liable under this part only if the owner or operator is responsible
27 for an activity causing a release or threat of release.

28 (8) An owner or operator ~~who~~**that** was in compliance with
29 subsection (1)(c)(i) and (ii) ~~prior to~~**before** December 14, 2010 is

1 considered to be in compliance with subsection (1) (c) (i) and (ii).

2 (9) This section does not apply to liability under section
3 20136.

4 Sec. 20136. (1) An individual who does not have a present
5 injury or disease has a cause of action for the remedy of medical
6 monitoring against a person that is liable under section 20126 if
7 all of the following are demonstrated by a preponderance of the
8 evidence:

9 (a) The individual or, subject to subsection (2), the
10 individual's biological parent had an exposure to the hazardous
11 substance at a rate significantly greater than the general
12 population.

13 (b) As a proximate result of the exposure, the individual has
14 suffered an increased risk of contracting a serious disease.

15 (c) The increased risk of contracting a serious disease makes
16 it medically necessary for the individual to undergo periodic
17 medical monitoring procedures different from those prescribed for
18 the general population in the absence of exposure.

19 (d) The medical monitoring procedures exist and are reasonable
20 in cost and safe for use.

21 (e) The person responsible for the release of the hazardous
22 substance employed 5 or more full-time employees at the time of the
23 release.

24 (2) This section applies to an individual whose biological
25 parent had an exposure to a hazardous substance if the exposure
26 occurred before the individual was born.

27 (3) If the cost of medical monitoring is awarded, the court
28 shall order the defendant found liable to pay the award to a court-
29 supervised medical monitoring program administered by 1 or more

1 appropriate health professionals, including professionals with
2 expertise in exposure to hazardous substances or expertise with
3 treating or monitoring the relevant latent disease or diseases.

4 (4) Upon an award of medical monitoring under subsection (3),
5 the court shall award to the plaintiff reasonable attorney fees and
6 other litigation costs reasonably incurred.

7 (5) This section is the exclusive remedy for an individual
8 without a present injury to bring a cause of action to seek medical
9 monitoring because of exposure to a hazardous substance.

10 (6) Except as provided under subsection (5), this section does
11 not preclude the pursuit of any other civil or injunctive remedy or
12 defense available under statute or common law, including, but not
13 limited to, the right of any person to seek to recover damages
14 related to the manifestation of a latent disease. The remedies and
15 defenses in this section are in addition to those provided by other
16 statutory or common law. The remedies provided in this section may
17 be awarded in an action under section 20135.

18 (7) This section does not increase the rights and remedies
19 available under the worker's disability compensation act of 1969,
20 1969 PA 317, MCL 418.101 to 418.941, to an employee who suffers a
21 personal injury by accident arising out of and in the course of
22 employment.

23 (8) An action under this section may be brought as a class
24 action.

25 (9) As used in this section:

26 (a) "Disease" means a disease, illness, ailment, or adverse
27 physiological or chemical change linked to exposure to a hazardous
28 substance. A disease is serious if it has the potential to cause
29 death, disability, or chronic pain.

1 (b) "Exposure" means ingestion, inhalation, or absorption
2 through any body surface.

3 (c) "Medical monitoring" means a program of medical tests or
4 procedures for the purpose of early detection of signs or symptoms
5 of a latent disease resulting from exposure.

6 Sec. 20140. (1) Except as provided in subsections (2), ~~and~~
7 (3), ~~and (5)~~, the limitation period for filing actions under this
8 part is as follows:

9 (a) For the recovery of response activity costs and natural
10 resources damages ~~pursuant to~~ **under** section 20126a(1)(a), (b), or
11 (c), within 6 years of initiation of physical on-site construction
12 activities for the remedial action selected or approved by the
13 department at a facility, except as provided in subdivision (b).

14 (b) For 1 or more subsequent actions for recovery of response
15 activity costs ~~pursuant to~~ **under** section 20126, at any time during
16 the response activity, if commenced not later than 3 years after
17 the date of completion of all response activity at the facility.

18 (c) For civil fines under this part, within 3 years after
19 discovery of the violation for which the civil fines are assessed.

20 (2) For recovery of natural resources damages that accrued
21 ~~prior to~~ **before** July 1, 1991, the limitation period for filing
22 actions under this part is July 1, 1994.

23 (3) For recovery of response activity costs that were incurred
24 ~~prior to~~ **before** July 1, 1991, the limitation period for filing
25 actions under this part is July 1, 1994.

26 (4) Subsection (3) is curative and intended to clarify the
27 original intent of the legislature and applies retroactively.

28 (5) **This section does not apply to an action under section**
29 **20136.**