## **HOUSE BILL NO. 4645**

May 23, 2023, Introduced by Reps. Haadsma, Hope, DeBoer, Morgan, Hood, Paiz, Byrnes, Miller, Rogers, Liberati, Dievendorf, Tyrone Carter, MacDonell, McKinney, Edwards and Hill and referred to the Committee on Judiciary.

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 368.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- Sec. 20101b. (1) A lender or other person who that has not
  participated in the management of a property as described in
  section 20101a before assuming ownership or control of the property
- 4 as a fiduciary, as defined by section 1104 of the estates and

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- 1 protected individuals code, 1998 PA 386, MCL 700.1104, or in a
- 2 representative capacity for a disabled person under section 5501 of
- 3 the estates and protected individuals code, 1998 PA 386, MCL
- 4  $\frac{700.5501}{100}$ , a durable power of attorney as described in section 102
- 5 of the uniform power of attorney act and that is acting or has
- 6 acted in a capacity permitted by the estates and protected
- 7 individuals code, 1998 PA 386, MCL 700.1101 to 700.8102 700.8206,
- 8 is not personally liable as an owner or operator of the property
- 9 under this part. This subsection does not do either of the
- 10 following:
- 11 (a) Relieve the fiduciary from personal liability as the
- 12 result of the fiduciary's assumption of personal liability, or
- 13 negligence, gross negligence, or reckless, willful, or intentional
- 14 misconduct.
- 15 (b) Prevent a claim against the assets that are part of or all
- 16 of the estate or trust that contains the facility; another estate
- 17 or trust of the decedent, grantor, ward, or other person whose
- 18 estate or trust contains the facility that is administered by the
- 19 lender or other person; or another estate or trust of the decedent,
- 20 grantor, ward, or other person whose estate or trust contains the
- 21 facility. Such a claim may be asserted against the fiduciary in its
- 22 representative capacity, whether or not the fiduciary is personally
- 23 liable.
- 24 (2) A lender that has not participated in the management of a
- 25 property as described in section 20101a before assuming ownership
- 26 or control of the property in a fiduciary capacity —and that,
- 27 under a fiduciary agreement entered into on or before August 1,
- 28 1990, owns or controls the property in a fiduciary capacity that is
- 29 authorized by the banking code of 1999, 1999 PA 276, MCL 487.11101

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- 1 to 487.15105, or the national bank act, chapter 106, 13 Stat. 99,
- 2 is 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,
- 7 negligence, gross negligence, or reckless, willful, or intentional
- 8 misconduct.
- **9** (b) Prevent a claim against the assets that are part of or all
- 10 of the estate or trust that contains the facility; another estate
- 11 or trust of the decedent, grantor, ward, or other person whose
- 12 estate or trust contains the facility that is administered by the
- 13 lender; or another estate or trust of the decedent, grantor, ward,
- 14 or other person whose estate or trust contains the facility. Such a
- 15 claim may be asserted against the fiduciary in its representative
- 16 capacity, whether or not the fiduciary is personally liable.
- 17 (3) A lender that has not participated in the management of a
- 18 property as described in section 20101a before assuming ownership
- 19 or control of the property in a fiduciary capacity, and that, under
- 20 a fiduciary agreement entered into after August 1, 1990, owns or
- 21 controls the property in a fiduciary capacity that is authorized by
- 22 the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105,
- 23 or the national bank act, chapter 106, 13 Stat. 99, that has served
- 24 only in an administrative, custodial, or financial capacity with
- 25 respect to the property, and that has not exercised sufficient
- 26 involvement to control the owner's or operator's handling of a
- 27 hazardous substance  $\tau$  is not personally liable as an owner or
- 28 operator of the property under this part. This subsection does not
- 29 do either of the following:

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- (a) Relieve the fiduciary from personal liability as the
   result of the fiduciary's assumption of personal liability,
   negligence, gross negligence, or reckless, willful, or intentional
   misconduct.
- 6 of the estate or trust that contains the facility; another estate
  7 or trust of the decedent, grantor, ward, or other person whose
  8 estate or trust contains the facility that is administered by the
  9 lender; or another estate or trust of the decedent, grantor, ward,
  10 or other person whose estate or trust contains the facility. Such a
  11 claim may be asserted against the fiduciary in its representative
  12 capacity, whether or not the fiduciary is personally liable.
- Enacting section 1. This amendatory act does not take effect unless Senate Bill No. \_\_\_\_ or House Bill No. 4644 (request no.
- 15 02179'23) of the 102nd Legislature is enacted into law.