

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:

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

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 ~~700.5501,~~ **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

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 ~~is~~ 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:

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 intentional
4 misconduct.

5 (b) Prevent a claim against the assets that are part of or all
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.

13 Enacting section 1. This amendatory act does not take effect
14 unless Senate Bill No. ____ or House Bill No. 4644 (request no.
15 02179'23) of the 102nd Legislature is enacted into law.