

# HOUSE BILL No. 5955

May 27, 2004, Introduced by Reps. Hopgood, Farrah, Condino, Zelenko, Ward, LaJoy and Ehardt and referred to the Committee on Land Use and Environment.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending section 20126 (MCL 324.20126), as amended by 1999 PA  
196.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5       (a) The owner or operator of a facility if the owner or  
6 operator is responsible for an activity causing a release or  
7 threat of release.

8       (b) The owner or operator of a facility at the time of  
9 disposal of a hazardous substance if the owner or operator is  
10 responsible for an activity causing a release or threat of

1 release.

2 (c) An owner or operator of a facility who becomes an owner  
3 or operator on or after June 5, 1995, unless the owner or  
4 operator complies with both of the following:

5 (i) A baseline environmental assessment is conducted prior to  
6 or within 45 days after the earlier of the date of purchase,  
7 occupancy, or foreclosure. For purposes of this section,  
8 assessing property to conduct a baseline environmental assessment  
9 does not constitute occupancy.

10 (ii) The owner or operator discloses the results of a  
11 baseline environmental assessment to the department and  
12 subsequent purchaser or transferee if the baseline environmental  
13 assessment confirms that the property is a facility.

14 (d) A person who by contract, agreement, or otherwise  
15 arranged for disposal or treatment, or arranged with a  
16 transporter for transport for disposal or treatment, of a  
17 hazardous substance owned or possessed by the person, by any  
18 other person, at a facility owned or operated by another person  
19 and containing the hazardous substance. This subdivision does  
20 not include any of the following:

21 (i) A person who, on or after June 5, 1995, arranges for the  
22 sale or transport of a secondary material for use in producing a  
23 new product. As used in this subparagraph, secondary material  
24 means scrap metal, paper, plastic, glass, textiles, or rubber,  
25 which has demonstrated reuse or recycling potential and has been  
26 separated or removed from the solid waste stream for reuse or  
27 recycling, whether or not subsequent separation and processing is

1 required, if substantial amounts of the material are consistently  
2 used in the manufacture of products which may otherwise be  
3 produced from a raw or virgin material.

4 (ii) A person who, prior to June 5, 1995, arranges for the  
5 sale or transport of a secondary material for use in producing a  
6 new product unless the state has incurred response activity costs  
7 associated with these secondary materials prior to ~~the effective~~  
8 ~~date of the 1999 amendments to this section~~ **December 17, 1999.**

9 As used in this subparagraph, secondary material means scrap  
10 metal, paper, plastic, glass, textiles, or rubber, which has  
11 demonstrated reuse or recycling potential and has been separated  
12 or removed from the solid waste stream for reuse or recycling,  
13 whether or not subsequent separation and processing is required,  
14 if substantial amounts of the material are consistently used in  
15 the manufacture of products which may otherwise be produced from  
16 a raw or virgin material.

17 (iii) A person who arranges the lawful transport or disposal  
18 of any product or container commonly used in a residential  
19 household, which is in a quantity commonly used in a residential  
20 household, and which was used in the person's residential  
21 household.

22 (iv) A local unit of government that arranges the lawful  
23 transport or disposal from residential households of any products  
24 or containers that are commonly used in residential households,  
25 that are in quantities commonly used in residential households,  
26 and that were used in those residential households.

27 (e) A person who accepts or accepted any hazardous substance

1 for transport to a facility selected by that person.

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

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

13 (3) Notwithstanding subsection (1), the following persons are  
14 not liable under this part unless the person is responsible for  
15 an activity causing a release at the facility:

16 (a) The state or a local unit of government that acquired  
17 ownership or control of a facility involuntarily through  
18 bankruptcy, tax delinquency, abandonment, a transfer from a  
19 lender pursuant to subsection (7), or other circumstances in  
20 which the government involuntarily acquires title or control by  
21 virtue of its governmental function or as provided in this part,  
22 a local unit of government to which ownership or control of a  
23 facility is transferred by the state or by another local unit of  
24 government that is not liable under subsection (1), or the state  
25 or a local unit of government that acquired ownership or control  
26 of a facility by seizure, receivership, or forfeiture pursuant to  
27 the operation of law or by court order.

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

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

12           (d) A person who owns severed subsurface mineral rights or  
13 severed subsurface formations or who leases subsurface mineral  
14 rights or formations.

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

19           (f) A person who owns or occupies residential real property  
20 if hazardous substance use at the property is consistent with  
21 residential use.

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

26           (h) A person who did not know and had no reason to know that  
27 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  
2 a facility, the person shall have undertaken at the time of  
3 acquisition all appropriate inquiry into the previous ownership  
4 and uses of the property consistent with good commercial or  
5 customary practice. A determination of liability under this  
6 section shall take into account any specialized knowledge or  
7 experience on the part of the person, the relationship of the  
8 purchase price to the value of the property if uncontaminated by  
9 a hazardous substance, commonly known or reasonable ascertainable  
10 information about the property, the obviousness of the presence  
11 or likely presence of a release or threat of release at the  
12 property, and the ability to detect a release or threat of  
13 release by appropriate inspection.

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

18 (j) A lessee who uses property for retail, office, or  
19 commercial purpose.

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

22 (a) The owner or operator of a hazardous waste treatment,  
23 storage, or disposal facility regulated pursuant to part 111 from  
24 which there is a release or threat of release solely from the  
25 treatment, storage, or disposal facility, or a waste management  
26 unit at the facility and the release or threat of release is  
27 subject to corrective action under part 111.

1 (b) A lender that engages in or conducts a lawful marshalling  
2 or liquidation of personal property if the lender does not cause  
3 or contribute to the environmental contamination. This includes  
4 holding a sale of personal property on a portion of the  
5 facility.

6 (c) The owner or operator of property onto which  
7 contamination has migrated unless that person is responsible for  
8 an activity causing the release that is the source of the  
9 contamination.

10 (d) A person who owns or operates a facility in which the  
11 release or threat of release was caused solely by 1 or more of  
12 the following:

13 (i) An act of God.

14 (ii) An act of war.

15 (iii) An act or omission of a third party other than an  
16 employee or agent of the person or a person in a contractual  
17 relationship existing either directly or indirectly with a person  
18 who is liable under this section.

19 (5) Notwithstanding any other provision of this part, the  
20 state or a local unit of government or a lender who has not  
21 participated in the management of the facility is not liable  
22 under this part for costs or damages as a result of response  
23 activity taken in response to a release or threat of release.  
24 For a lender, this subsection applies only to response activity  
25 undertaken prior to foreclosure. This subsection does not  
26 preclude liability for costs or damages as a result of gross  
27 negligence, including reckless, willful, or wanton misconduct, or

1 intentional misconduct by the state or local unit of government.

2 (6) In establishing liability under this section, the  
3 department bears the burden of proof. If the department proves a  
4 prima facie case against a person, the person shall bear the  
5 burden of showing by a preponderance of the evidence that he or  
6 she is not liable under this section.

7 (7) A lender that is not responsible for an activity causing  
8 a release at a facility and that establishes that it has met the  
9 requirements of subsection (1)(c) with respect to that facility  
10 may immediately transfer to the state the property on which there  
11 has been a release or a threat of a release if the lender  
12 complies with all of the following:

13 (a) Within 9 months following foreclosure and for a period of  
14 at least 120 days, the lender either lists the facility with a  
15 broker, dealer, or agent who deals with the type of property in  
16 question, or advertises the facility as being for sale or  
17 disposition on at least a monthly basis in either a real estate  
18 publication, a trade or other publication suitable for the  
19 facility in question, or a newspaper of general circulation of  
20 over 10,000 covering the area where the property is located.

21 (b) The lender has taken reasonable care in maintaining and  
22 preserving the real estate and permanent fixtures.

23 (c) The lender provides to the department all environmental  
24 information related to the facility that is available to the  
25 lender.

26 (d) If the department has issued an order pursuant to section  
27 20119, the lender has complied with the order to the department's



1 satisfaction.

2 (e) If conditions on the property pose a threat of fire or  
3 explosion or present an imminent hazard through direct contact  
4 with hazardous substances, the lender has undertaken appropriate  
5 response activities to abate the threat or hazard.

6 (8) The department shall establish minimum technical  
7 standards for baseline environmental assessments conducted under  
8 this section in guidelines pursuant to the administrative  
9 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

10 (9) Notwithstanding subsection (1)(c), if the owner or  
11 operator of the facility became the owner or operator of the  
12 facility on or after June 5, 1995 and prior to March 6, 1996, and  
13 the facility contains an underground storage tank system as  
14 defined in part 213, that owner or operator is liable under this  
15 part only if the owner or operator is responsible for an activity  
16 causing a release or threat of release.