

House Bill 5495

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20101b and 80312 (MCL 324.20101b and 324.80312), section 20101b as added by 1995 PA 71 and section 80312 as added by 1995 PA 58.

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~~ 1104 OF THE
7 ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL
8 700.1104, or in a representative capacity for a disabled person
9 under section ~~495 of Act No. 642 of the Public Acts of 1978,~~

1 ~~being section 700.495 of the Michigan Compiled Laws~~ 5501 OF THE
2 ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL
3 700.5501, and that is acting or has acted in a capacity permitted
4 by the ~~revised probate code, Act No. 642 of the Public Acts of~~
5 ~~1978, being sections 700.1 to 700.993 of the Michigan Compiled~~
6 ~~Laws~~ ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL
7 700.1101 TO 700.8102, is not personally liable as an owner or
8 operator of the property under this part. This subsection does
9 not do either of the following:

10 (a) Relieve the fiduciary from personal liability as the
11 result of the fiduciary's assumption of personal liability, or
12 negligence, gross negligence, or reckless, willful, or inten-
13 tional misconduct.

14 (b) Prevent ~~claims~~ A CLAIM against the assets that are
15 part of or all of the estate or trust that contains the facility;
16 ~~any other~~ ANOTHER estate or trust of the decedent, grantor,
17 ward, or other person whose estate or trust contains the facility
18 that is administered by the lender or other person; or ~~any~~
19 ~~other~~ ANOTHER estate or trust of the decedent, grantor, ward, or
20 other person whose estate or trust contains the facility. Such
21 ~~claims~~ A CLAIM may be asserted against the fiduciary in its
22 representative capacity, whether or not the fiduciary is person-
23 ally liable.

24 (2) A lender that has not participated in the management of
25 a property as described in section 20101a ~~prior to~~ BEFORE
26 assuming ownership or control of the property in a fiduciary
27 capacity, and under a fiduciary agreement entered into on or

1 before August 1, 1990 owns or controls the property in a
2 fiduciary capacity that is authorized by the banking code of
3 1969, ~~Act No. 319 of the Public Acts of 1969, being sections~~
4 ~~487.301 to 487.598 of the Michigan Compiled Laws~~ 1969 PA 319,
5 MCL 487.301 TO 487.598, or the national bank act, chapter 106, 13
6 Stat. 99, is not personally liable as an owner or operator of the
7 property under this part. This subsection does not do either of
8 the following:

9 (a) Relieve the fiduciary from personal liability as the
10 result of the fiduciary's assumption of personal liability, neg-
11 ligence, gross negligence, or reckless, willful, or intentional
12 misconduct.

13 (b) Prevent ~~claims~~ A CLAIM against the assets that are
14 part of or all of the estate or trust that contains the facility;
15 ~~any other~~ ANOTHER estate or trust of the decedent, grantor,
16 ward, or other person whose estate or trust contains the facility
17 that is administered by the lender; or ~~any other~~ ANOTHER estate
18 or trust of the decedent, grantor, ward, or other person whose
19 estate or trust contains the facility. Such ~~claims~~ A CLAIM may
20 be asserted against the fiduciary in its representative capacity,
21 whether or not the fiduciary is personally liable.

22 (3) A lender that has not participated in the management of
23 a property as described in section 20101a ~~prior to~~ BEFORE
24 assuming ownership or control of the property in a fiduciary
25 capacity, and ~~pursuant to~~ UNDER a fiduciary agreement entered
26 into after August 1, 1990 owns or controls the property in a
27 fiduciary capacity that is authorized by ~~Act No. 319 of the~~

1 ~~Public Acts of 1969~~ THE BANKING CODE OF 1969, 1969 PA 319, MCL
2 487.301 TO 487.598, or the national bank act, chapter 106, 13
3 Stat. 99, that has served only in an administrative, custodial,
4 or financial capacity with respect to the property, and has not
5 exercised sufficient involvement to control the owner's or
6 operator's handling of a hazardous substance, is not personally
7 liable as an owner or operator of the property under this part.
8 This subsection does not do either of the following:

9 (a) Relieve the fiduciary from personal liability as the
10 result of the fiduciary's assumption of personal liability, neg-
11 ligence, gross negligence, or reckless, willful, or intentional
12 misconduct.

13 (b) Prevent ~~claims~~ A CLAIM against the assets that are
14 part of or all of the estate or trust that contains the facility;
15 ~~any other~~ ANOTHER estate or trust of the decedent, grantor,
16 ward, or other person whose estate or trust contains the facility
17 that is administered by the lender; or ~~any other~~ ANOTHER estate
18 or trust of the decedent, grantor, ward, or other person whose
19 estate or trust contains the facility. Such ~~claims~~ A CLAIM may
20 be asserted against the fiduciary in its representative capacity,
21 whether or not the fiduciary is personally liable.

22 Sec. 80312. (1) The secretary of state may issue a certifi-
23 cate of title for a watercraft to a person who complies with sub-
24 section (2) or (3) if the transfer of ownership of that water-
25 craft is any of the following:

1 (a) By operation of law including, but not limited to,
2 inheritance, devise, bequest, order in bankruptcy, insolvency,
3 replevin, or execution of sale.

4 (b) By sale to satisfy a storage or repair charge.

5 (c) By repossession upon default in performance of the terms
6 of a security agreement.

7 (d) ~~Pursuant to~~ AS PROVIDED IN subsection (3).

8 (2) A person applying for a certificate of title under this
9 section shall do all of the following:

10 (a) Surrender to the secretary of state either a valid cer-
11 tificate of title or the manufacturer's or importer's certificate
12 for the watercraft or, if surrender of a certificate for that
13 watercraft is not possible, present proof satisfactory to the
14 secretary of state of the applicant's ownership of and right of
15 possession to the watercraft.

16 (b) Pay the fee prescribed in section 80311.

17 (c) Present to the secretary of state an application for
18 certificate of title.

19 (3) A person may petition the secretary of state for a cer-
20 tificate or certificates of title for 1 or more registered water-
21 craft that the person does not own, if each of the following cir-
22 cumstances exists:

23 (a) The record owner of the registered watercraft dies with-
24 out leaving other property that requires the procurement of let-
25 ters ~~of administration or letters of authority under the revised~~
26 ~~probate code, Act No. 642 of the Public Acts of 1978, being~~
27 ~~sections 700.1 to 700.993 of the Michigan Compiled Laws~~ UNDER

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H.B. 5495 as amended March 15, 2000

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1 THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL
2 700.1101 TO 700.8102.

3 (b) The total value of the deceased owner's interest in all
4 watercraft subject to the petition for a certificate or certifi-
5 cates of title under this section is \$100,000.00 or less.

6 (c) The person petitioning for a certificate or certificates
7 of title under this section is 1 of the following, in the follow-
8 ing order of priority:

9 (i) The surviving spouse of the watercraft owner.

10 (ii) A person entitled to the certificate or certificates of
11 title ~~pursuant to section 106 of the revised probate code, Act~~
12 ~~No. 642 of the Public Acts of 1978, being section 700.106 of the~~
13 ~~Michigan Compiled Laws [IN THE ORDER SPECIFIED IN] SECTION 2103 OF~~
~~THE ESTATES AND~~
14 PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.2103.

15 (d) The person who petitions for a certificate of title
16 under this section furnishes the secretary of state with proof
17 satisfactory to the secretary of state of each of the following:

18 (i) The death of the owner of each watercraft for which a
19 certificate of title is sought.

20 (ii) The petitioner's priority to receive the decedent's
21 interest in each watercraft for which a certificate of title is
22 sought.

23 (4) A certification by the person, or agent of the person,
24 to whom possession of the watercraft passed, that sets forth the
25 facts entitling that person to possession and ownership of the
26 watercraft, together with a copy of the journal entry, court
27 order, instrument, or other document upon which the claim of

1 possession and ownership is founded, are satisfactory proof of
2 ownership and right of possession. If the applicant cannot
3 produce proof of ownership, the applicant may apply to the secre-
4 tary of state for a certificate of title and submit evidence that
5 establishes that person's ownership interest in the watercraft.
6 If the secretary of state finds the evidence sufficient, the sec-
7 retary of state may issue to that person a certificate of title
8 for that watercraft. The office of secretary of state shall
9 examine the records in its possession and, if it determines from
10 that examination that a lien is on the watercraft, and if the
11 applicant fails to provide satisfactory evidence of extinction of
12 the lien, the secretary of state shall furnish a certificate of
13 title that contains a statement of the lien.

14 Enacting section 1. This amendatory act takes effect
15 April 1, 2000.