



# SENATE BILL No. 238

February 7, 1995, Introduced by Senators ROGERS, HOFFMAN, SCHUETTE, MC MANUS, BENNETT, CARL and SHUGARS and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend section 3 of Act No. 307 of the Public Acts of 1982, entitled as amended

"The environmental response act,"

as amended by Act No. 310 of the Public Acts of 1993, being section 299.603 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 3 of Act No. 307 of the Public Acts of  
2 1982, as amended by Act No. 310 of the Public Acts of 1993, being  
3 section 299.603 of the Michigan Compiled Laws, is amended to read  
4 as follows:

5 Sec. 3. As used in this act:

6 (a) "Act of God" means an unanticipated grave natural  
7 disaster or other natural phenomenon of an exceptional,  
8 inevitable, and irresistible character, the effects of which

1 could not have been prevented or avoided by the exercise of due  
2 care or foresight.

3 (b) "Agricultural property" means real property used for  
4 farming in any of its branches, including cultivating of soil;  
5 growing and harvesting of any agricultural, horticultural, or  
6 floricultural commodity; dairying; raising of livestock, bees,  
7 fish, fur-bearing animals, or poultry; turf and tree farming; and  
8 performing any practices on a farm as an incident to, or in con-  
9 junction with, these farming operations. Agricultural property  
10 does not include property used for commercial storage, process-  
11 ing, distribution, marketing, or shipping operations.

12 (c) "Attorney general" means the department of the attorney  
13 general.

14 (d) "Commercial lending institution" means any of the  
15 following:

16 (i) A state or nationally chartered bank.

17 (ii) A state or federally chartered savings and loan associ-  
18 ation or savings bank.

19 (iii) A state or federally chartered credit union.

20 (iv) Any other state or federally chartered lending institu-  
21 tion or regulated affiliate or regulated subsidiary of any entity  
22 listed in this subparagraph or subparagraphs (i) to (iii).

23 (v) An insurance company authorized to do business in this  
24 state pursuant to the insurance code of 1956, Act No. 218 of the  
25 Public Acts of 1956, being sections 500.100 to 500.8302 of the  
26 Michigan Compiled Laws.

1 (vi) A motor vehicle finance company subject to the motor  
2 vehicle SALES finance act, Act No. 27 of the Extra Session of  
3 1950, being sections 492.101 to 492.141 of the Michigan Compiled  
4 Laws, with net assets in excess of \$50,000,000.00.

5 (vii) A foreign bank.

6 (viii) A retirement fund regulated pursuant to state law or  
7 a pension fund regulated pursuant to federal law with net assets  
8 in excess of \$50,000,000.00.

9 (ix) A state or federal agency authorized by law to hold a  
10 security interest in real property.

11 (x) A nonprofit tax exempt organization created to promote  
12 economic development in which a majority of the organization's  
13 assets are held by a local unit of government.

14 (e) "Department" means the director of the department of  
15 natural resources or his or her designee.

16 (f) "Director" means the director of the department of natu-  
17 ral resources.

18 (g) "Directors" means the directors or their designees of  
19 the departments of natural resources, public health, agriculture,  
20 and state police.

21 (h) "Disposal" means the discharge, deposit, injection,  
22 dumping, spilling, leaking, or placing of any hazardous substance  
23 into or on any land or water so that the hazardous substance or  
24 any constituent of the hazardous substance may enter the environ-  
25 ment or be emitted into the air or discharged into any groundwa-  
26 ter or surface water.

1 (i) "Enforcement costs" means court expenses, reasonable  
2 attorney fees of the attorney general, and other reasonable  
3 expenses of an executive department that are incurred in relation  
4 to enforcement under this act or rules promulgated under this  
5 act, or both.

6 (j) "Environment" or "natural resources" means any land,  
7 surface water, groundwater, subsurface        strata, air, fish,  
8 wildlife, or biota within the state.

9 (k) "Environmental contamination" means the release of a  
10 hazardous substance, or the potential release of a discarded haz-  
11 ardous substance, in a quantity, which is or may become injurious  
12 to the environment, or to the public health, safety, or welfare.

13 (l) "Evaluation" means those activities including, but not  
14 limited to, investigation, studies, sampling, analysis, develop-  
15 ment of feasibility studies, and administrative efforts, that are  
16 needed to determine the nature, extent, and impact of a release  
17 or threat of release and necessary response activities.

18 (m) "Facility" means any area, place, or property where a  
19 hazardous substance has been released, deposited, stored, dis-  
20 posed of, or otherwise comes to be located.

21 (n) "Feasibility study" means a process for developing,  
22 evaluating, and selecting appropriate response activities.

23 (o) "Fund" means the environmental response fund established  
24 in section 9.

25 (p) "Hazardous substance" means 1 or more of the following:

1 (i) A chemical or other material which is or may become  
2 injurious to the public health, safety, or welfare or to the  
3 environment.

4 (ii) "Hazardous substance" as defined in the comprehensive  
5 environmental response, compensation, and liability act of 1980,  
6 Public Law 96-510, 94 Stat. 2767.

7 (iii) "Hazardous waste" as defined in the hazardous waste  
8 management act, Act No. 64 of the Public Acts of 1979, being  
9 sections 299.501 to 299.551 of the Michigan Compiled Laws.

10 (iv) "Petroleum" as described in section 4(5)(b) of the  
11 leaking underground storage tank act, Act No. 478 of the Public  
12 Acts of 1988, being section 299.834 of the Michigan Compiled  
13 Laws.

14 (q) "Interim response activity" means the cleanup or removal  
15 of a released hazardous substance or the taking of other actions,  
16 prior to the implementation of a remedial action, as may be nec-  
17 essary to prevent, minimize, or mitigate injury to the public  
18 health, safety, or welfare, or to the environment. Interim  
19 response activity also includes, but is not limited to, measures  
20 to limit access, replacement of water supplies, and temporary  
21 relocation of people as determined to be necessary by the  
22 department. In addition, interim response activity means the  
23 taking of other actions as may be necessary to prevent, minimize,  
24 or mitigate a threatened release.

25 (r) "Local health department" means that term as defined in  
26 section 1105 of the public health code, Act No. 368 of the Public

1 Acts of 1978, being section 333.1105 of the Michigan Compiled  
2 Laws.

3 (s) "Local unit of government" means a county, city, town-  
4 ship, or village, an agency of a local unit of government, an  
5 authority or any other public body or entity created by or pursu-  
6 ant to state law. Local unit of government does not include the  
7 state or federal government or a state or federal agency.

8 (t) "Operator" means a person that is in control of or  
9 responsible for the operation of a facility. Operator does not  
10 include any of the following:

11 (i) A person that holds indicia of ownership primarily to  
12 protect the person's security interest in the facility, unless  
13 that person participates in the management of the facility as  
14 defined under section 3a.

15 (ii) The state or a local unit of government that acquired  
16 ownership or control of the facility involuntarily through bank-  
17 ruptcy, tax delinquency, abandonment, a transfer from a commer-  
18 cial lending institution pursuant to section 12a(9), or other  
19 circumstances in which the government involuntarily acquires  
20 title or control by virtue of its governmental function or as  
21 provided in this act, a local unit of government to which owner-  
22 ship or control of the facility is transferred by the state, or  
23 the state or a local unit of government that acquired ownership  
24 or control of the facility by seizure, receivership, or forfei-  
25 ture pursuant to the operation of law or by court order. In case  
26 of an acquisition described in this subparagraph by the state or  
27 a local unit of government, operator means a person that was in

1 control of or responsible for operation of the facility  
2 immediately before the state or local unit of government acquired  
3 ownership or control. The exclusion provided in this subpara-  
4 graph ~~shall~~ DOES not apply to the state or a local unit of gov-  
5 ernment that caused or contributed to the release or threat of a  
6 release from the facility.

7 (iii) A PERSON WHO HAS NOT CAUSED OR CONTRIBUTED TO THE  
8 RELEASE OR THREAT OF RELEASE ON THE PROPERTY AND WHO OPERATES A  
9 FACILITY ON PROPERTY ACQUIRED FROM THE STATE OR A LOCAL UNIT OF  
10 GOVERNMENT FOLLOWING THE STATE'S OR LOCAL UNIT OF GOVERNMENT'S  
11 ACQUISITION OF THE PROPERTY THROUGH EITHER OF THE FOLLOWING:

12 (A) A MEANS DESCRIBED IN SUBPARAGRAPH (ii).

13 (B) CONDEMNATION.

14 (iv) ~~(iii)~~ The operator of an underground storage tank  
15 system, as defined in the leaking underground storage tank act,  
16 Act No. 478 of the Public Acts of 1988, being sections 299.831 to  
17 299.850 of the Michigan Compiled Laws, from which there is a  
18 release or threat of release if all of the following conditions  
19 are met:

20 (A) The operator reported the release or threat of release  
21 to the department ~~of state police, fire marshal division,~~  
22 within 24 hours after confirmation of the release or threat of  
23 release.

24 (B) The release or threat of release at the facility is  
25 solely the result of a release or threat of release of a regu-  
26 lated substance as defined in Act No. 478 of the Public Acts of  
27 1988 from an underground storage tank system.

1 (C) The operator is in compliance with the requirements of  
2 Act No. 478 of the Public Acts of 1988, and any promulgated rules  
3 or any order, agreement, or judgment issued or entered into pur-  
4 suant to that act.

5 (v) ~~(iv)~~ A state or local unit of government that holds or  
6 acquires an easement interest in a facility, holds or acquires an  
7 interest in a facility by dedication in a plat, or by dedication  
8 pursuant to Act No. 283 of the Public Acts of 1909, being sec-  
9 tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-  
10 sion provided in this subparagraph ~~shall~~ DOES not apply to the  
11 state or a local unit of government that holds an easement or  
12 dedication if the state or that local unit of government caused  
13 or contributed to a release or threat of release, or if equipment  
14 owned or operated by the state or that local unit of government  
15 caused or contributed to the release or threat of release.

16 (vi) ~~(v)~~ A person that holds an easement interest in a  
17 facility for the purpose of conveying or providing goods or serv-  
18 ices, including, but not limited to, utilities, sewers, roads,  
19 railways, and pipelines; or a person that acquires access through  
20 an easement. The exclusion provided in this subparagraph ~~shall~~  
21 DOES not apply to a person that holds an easement if that person  
22 caused or contributed to a release or threat of release, or if  
23 equipment owned or operated by that person caused or contributed  
24 to the release or threat of release.

25 (vii) ~~(vi)~~ A person that satisfies all of the following:



1 (A) The release was caused solely by a third party who is  
2 not an employee or agent of the person, or whose action was not  
3 associated with a contractual relationship with the person.

4 (B) The hazardous substance was not deposited, stored, or  
5 disposed of on the property upon which the person operates.

6 (C) The person at the time of transfer of the right to oper-  
7 ate on the property discloses any knowledge or information con-  
8 cerning the general nature and extent of the release as required  
9 in section 10c.

10 (u) "Owner" means a person that owns a facility. Owner does  
11 not include any of the following:

12 (i) A person that, without participating in the management  
13 of the facility, holds indicia of ownership primarily to protect  
14 the person's security interest in the facility, including, but  
15 not limited to, a vendor's interest under a recorded land  
16 contract.

17 (ii) The state or a local unit of government that acquired  
18 ownership or control of the facility involuntarily through bank-  
19 ruptcy, tax delinquency, abandonment, a transfer from a commer-  
20 cial lending institution pursuant to section 12a(9), or other  
21 circumstances in which the government involuntarily acquires  
22 title or control by virtue of its governmental function or as  
23 provided in this act, a local unit of government to which owner-  
24 ship or control of the facility is transferred by the state, or  
25 the state or a local unit of government that acquired ownership  
26 or control of the facility by seizure, receivership, or  
27 forfeiture pursuant to the operation of law or by court order.

1 In case of an acquisition described in this subparagraph by the  
2 state or a local unit of government, owner means any person who  
3 owned or controlled activities at the facility immediately before  
4 the state or local unit of government acquired ownership or  
5 control. The exclusion provided in this subparagraph ~~shall~~  
6 DOES not apply to the state or a local unit of government that  
7 caused or contributed to the release or threat of a release from  
8 the facility.

9 (iii) A PERSON WHO HAS NOT CAUSED OR CONTRIBUTED TO THE  
10 RELEASE OR THREAT OF RELEASE ON THE PROPERTY AND WHO ACQUIRES  
11 PROPERTY FROM THE STATE OR A LOCAL UNIT OF GOVERNMENT FOLLOWING  
12 THE STATE'S OR LOCAL UNIT OF GOVERNMENT'S ACQUISITION OF THE  
13 PROPERTY THROUGH EITHER OF THE FOLLOWING:

14 (A) A MEANS DESCRIBED IN SUBPARAGRAPH (ii).

15 (B) CONDEMNATION.

16 (iv) ~~(iii)~~ A person that satisfies all of the following:

17 (A) The release was caused solely by a third party, who is  
18 not an employee or agent of the person, or whose action was not  
19 associated with a contractual relationship with the person.

20 (B) The hazardous substance was not deposited, stored, or  
21 disposed of on that person's property.

22 (C) The person at the time of transfer of the property dis-  
23 closes any knowledge or information concerning the general nature  
24 and extent of the release as required in section 10c.

25 (v) ~~(iv)~~ The owner of an underground storage tank system  
26 or the property on which an underground storage tank system is  
27 located, as defined in the leaking underground storage tank act,

1 Act No. 478 of the Public Acts of 1988, being sections 299.831 to  
2 299.850 of the Michigan Compiled Laws, from which there is a  
3 release or threat of release if all of the following conditions  
4 are met:

5 (A) The owner reported the release or threat of release to  
6 the department ~~of state police, fire marshal division,~~ within  
7 24 hours after confirmation of the release or threat of release.

8 (B) The release or threat of release at the facility is  
9 solely the result of a release or threat of release of a regu-  
10 lated substance as defined in Act No. 478 of the Public Acts of  
11 1988 from an underground storage tank system.

12 (C) The owner is in compliance with the requirements of Act  
13 No. 478 of the Public Acts of 1988, and any promulgated rules or  
14 any order, agreement, or judgment issued or entered pursuant to  
15 that act.

16 (vi) ~~(v)~~ A state or local unit of government that holds or  
17 acquires an easement interest in a facility, holds or acquires an  
18 interest in a facility by dedication in a plat, or by dedication  
19 pursuant to Act No. 283 of the Public Acts of 1909, being sec-  
20 tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-  
21 sion provided in this subparagraph ~~shall~~ DOES not apply to the  
22 state or a local unit of government that holds an easement or  
23 dedication if that state or local unit of government caused or  
24 contributed to a release or threat of release, or if equipment  
25 owned or operated by the state or that local unit of government  
26 caused or contributed to the release or threat of release.

1           (vii) ~~(vi)~~ A person that holds an easement interest in a  
2 facility for the purpose of conveying or providing goods or  
3 services, including, but not limited to, utilities, sewers,  
4 roads, railways, and pipelines; or a person that acquires access  
5 through an easement. The exclusion provided in this subparagraph  
6 ~~shall~~ DOES not apply to a person that holds an easement if that  
7 person caused or contributed to a release or threat of release,  
8 or if equipment owned or operated by that person caused or con-  
9 tributed to the release or threat of release.

10           (viii) ~~(vii)~~ A person that holds only subsurface mineral  
11 rights to the property and has not caused or contributed to a  
12 release on the property.

13           (v) "Permitted release" means 1 or more of the following:

14           (i) A release in compliance with an applicable, legally  
15 enforceable permit issued under state law.

16           (ii) A lawful and authorized discharge into a permitted  
17 waste treatment facility.

18           (iii) A federally permitted release as defined in the com-  
19 prehensive environmental response, compensation, and liability  
20 act of 1980, Public Law 96-510, 94 Stat. 2767.

21           (w) "Person" means an individual, sole proprietorship, part-  
22 nership, joint venture, trust, firm, joint stock company, corpo-  
23 ration, including a government corporation, association, local  
24 unit of government, commission, the state, a political subdivi-  
25 sion of the state, an interstate body, the federal government, a  
26 political subdivision of the federal government, or any other  
27 legal entity.

1 (x) "Release" includes, but is not limited to, any spilling,  
2 leaking, pumping, pouring, emitting, emptying, discharging,  
3 injecting, escaping, leaching, dumping, or disposing of a hazard-  
4 ous substance into the environment, or the abandonment or dis-  
5 carding of barrels, containers, and other closed receptacles con-  
6 taining a hazardous substance. Release does not include any of  
7 the following:

8 (i) A release that results in exposure to persons solely  
9 within a workplace, with respect to a claim that these persons  
10 may assert against their employers.

11 (ii) Emissions from the engine exhaust of a motor vehicle,  
12 rolling stock, aircraft, or vessel.

13 (iii) A release of source, by-product, or special nuclear  
14 material from a nuclear incident, as those terms are defined in  
15 the atomic energy act of 1954, chapter 1073, 68 Stat. 919, if the  
16 release is subject to requirements with respect to financial pro-  
17 tection established by the nuclear regulatory commission under  
18 section 170 of the atomic energy act of 1954, chapter 1073, 71  
19 Stat. 576, 42 U.S.C. 2210, or, any release of source by-product,  
20 or special nuclear material from any processing site designated  
21 under section 102(a)(1) OF title I or 302(a) of title III of the  
22 uranium mill tailings radiation control act of 1978, PUBLIC LAW  
23 95-604, 42 U.S.C. 7912 and 7942.

24 (iv) If applied according to label directions and according  
25 to generally accepted agricultural and management practices, the  
26 application of a fertilizer, soil conditioner, agronomically  
27 applied manure, or a pesticide, or a combination of these

1 substances. As used in this subparagraph, fertilizer and soil  
2 conditioner have the meaning given to these terms in the fertil-  
3 izer act of 1975, Act No. 198 of the Public Acts of 1975, being  
4 sections 286.751 to 286.767, and pesticide has the meaning given  
5 to that term in the pesticide control act, Act No. 171 of the  
6 Public Acts of 1976, being sections 286.551 to 286.581 of the  
7 Michigan Compiled Laws.

8 (y) "Remedial action" includes, but is not limited to,  
9 cleanup, removal, containment, isolation, destruction, or treat-  
10 ment of a hazardous substance released or threatened to be  
11 released into the environment, monitoring, maintenance, or the  
12 taking of other actions that may be necessary to prevent, mini-  
13 mize, or mitigate injury to the public health, safety, or wel-  
14 fare, or to the environment.

15 (z) "Remedial action plan" means a work plan for performing  
16 remedial action under this act.

17 (aa) "Response activity" means evaluation, interim response  
18 activity, remedial action, or the taking of other actions neces-  
19 sary to protect the public health, safety, or welfare, or the  
20 environment, or the natural resources. Response activity also  
21 includes health assessments or health effect studies carried out  
22 under the supervision, or with the approval of, the department of  
23 public health, and enforcement actions related to any response  
24 activity.

25 (bb) "Response activity costs" or "costs of response  
26 activity" means all costs incurred in taking or conducting a  
27 response activity, including enforcement costs.

1 (cc) "Rule" means a rule promulgated pursuant to the  
2 administrative procedures act of 1969, Act No. 306 of the Public  
3 Acts of 1969, being sections 24.201 to 24.328 of the Michigan  
4 Compiled Laws.

5 (dd) "Science advisory council" means the science advisory  
6 council created in section 11d.

7 (ee) "Site" means the location of environmental  
8 contamination.

9 (ff) "Threatened release" or "threat of release" means any  
10 circumstance that may reasonably be anticipated to cause a  
11 release.