HOUSE BILL No. 1263

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11-2; IC 13-23-13-14; IC 13-23-13-15; IC 13-24; IC 13-25-4.

Synopsis: Lender liability for environmental problems. Provides, for purposes of the question of whether a lender is to be treated as an owner of an underground storage tank, a petroleum facility, or a vessel or facility from which a release has occurred, that a lender shall be considered to have participated in the management of the underground storage tank, petroleum facility, vessel, or facility only if the lender: (1) exercises decision making control over environmental compliance; or (2) exercises control at a level comparable to that of a manager of the underground storage tank, petroleum facility, vessel, or facility. Provides that the liability of a fiduciary for the release or threatened release of a hazardous substance from an underground storage tank,

(Continued next page)

Effective: July 1, 1998.

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January 13, 1998, read first time and referred to Committee on Environmental Affairs.

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vessel, or facility held in a fiduciary capacity does not exceed the assets held in a fiduciary capacity by the fiduciary. Provides that the liability of a fiduciary for the release or threatened release of petroleum from a petroleum facility does not exceed the assets held in a fiduciary capacity by the fiduciary. Provides that a fiduciary is not liable in its personal capacity for several types of actions involving an underground storage tank, a petroleum facility, a vessel, or a facility.

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Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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HOUSE BILL No. 1263

A BILL FOR AN ACT to amend the Indiana Code concerning the environment.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 13-11-2-48, AS ADDED BY P.L.1-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 48. "Creditor", for purposes of ~~IC 13-24-1-9 and~~ IC 13-25-4-8, means, with respect to a facility, ~~or a petroleum facility,~~ a person who:

(1) has extended credit to an owner or operator of the facility; ~~or petroleum facility;~~

(2) has an interest in the facility ~~or petroleum facility~~ to secure an extension of credit; or

(3) has acquired title or a right to title to the facility: ~~or petroleum facility:~~

(A) upon default;

(B) at foreclosure; or

(C) in lieu of foreclosure as a result of an extension of credit secured by an interest in the facility, ~~or petroleum facility~~

unless the extension of credit was solely for the purpose of avoiding environmental liability.

SECTION 2. IC 13-11-2-81, AS ADDED BY P.L.1-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 81. **(a)** "Fiduciary", for purposes of ~~IC 13-24-1-9, and IC 13-25-4-8, means a person who meets the definition set forth in: (1) IC 29-1-1-3; or (2) IC 30-2-4-1.~~ **IC 13-23-13:**

(1) means a person acting for the benefit of another party as a bona fide:

(A) trustee;

(B) executor;

(C) administrator;

(D) custodian;

(E) guardian of estates or guardian ad litem;

(F) receiver;

(G) conservator;

(H) committee of estates of incapacitated persons;

(I) personal representative;

(J) trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(K) representative in a capacity that is similar to the capacities referred to in clauses (A) through (J); and

(2) does not include:

(A) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, at least one (1) estate plan or because of the incapacity of a natural person; or

(B) a person that acquires ownership or control of an underground storage tank with the objective purpose of avoiding liability of the person or another person.

(b) "Fiduciary", for purposes of IC 13-24-1:

(1) means a person acting for the benefit of another party as a bona fide:

(A) trustee;

(B) executor;

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(C) administrator;
(D) custodian;
(E) guardian of estates or guardian ad litem;
(F) receiver;
(G) conservator;
(H) committee of estates of incapacitated persons;
(I) personal representative;
(J) trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or
(K) representative in a capacity that is similar to the capacities referred to in clauses (A) through (J); and

(2) does not include:
(A) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, at least one (1) estate plan or because of the incapacity of a natural person; or
(B) a person that acquires ownership or control of a petroleum facility with the purpose of avoiding liability of the person or of another person.

(c) "Fiduciary", for purposes of IC 13-25-4:
(1) means a person acting for the benefit of another party as a bona fide:
(A) trustee;
(B) executor;
(C) administrator;
(D) custodian;
(E) guardian of estates or guardian ad litem;
(F) receiver;
(G) conservator;
(H) committee of estates of incapacitated persons;
(I) personal representative;
(J) trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement for debt securities, certificates of interest or certificates of participation in debt securities,

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or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(K) representative in a capacity that is similar to the capacities referred to in clauses (A) through (J); and

(2) does not include:

(A) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, at least one (1) estate plan or because of the incapacity of a natural person; or

(B) a person that acquires ownership or control of a vessel or facility with the objective purpose of avoiding liability of the person or of another person.

SECTION 3. IC 13-11-2-81.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 81.5. (a) "Fiduciary capacity", for purposes of IC 13-23-13, means the capacity of a person in holding title to an underground storage tank pursuant to the exercise of the responsibilities of the person as a fiduciary.**

(b) "Fiduciary capacity", for purposes of IC 13-24-1, means the capacity of a person in holding title to a petroleum facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(c) "Fiduciary capacity", for purposes of IC 13-25-4, means the capacity of a person in holding title to a vessel or facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

SECTION 4. IC 13-11-2-85.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 85.5. "Financial or administrative function", for purposes of sections 151.2, 151.3, and 151.4 of this chapter, IC 13-23-13-14, IC 13-24-1-10, and IC 13-25-4-8.2, includes a function such as that of a:**

(1) credit manager;

(2) accounts payable officer;

(3) accounts receivable officer;

(4) personnel manager;

(5) comptroller; or

(6) chief financial officer or a similar function.

SECTION 5. IC 13-11-2-119, AS ADDED BY P.L.1-1996,

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SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 119. **(a) "Lender", for purposes of IC 13-23-13, means any of the following:**

(1) An insured depository institution (as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)).

(2) An insured credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(3) A bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(4) A leasing or trust company that is an affiliate of an insured depository institution.

(5) A person (including a successor or assignee of the person) that:

(A) makes a bona fide extension of credit to; or

(B) takes or acquires a security interest from;

a nonaffiliated person.

(6) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or an entity that buys or sells loans or interests in loans in a bona fide manner.

(7) A person that:

(A) insures or guarantees against a default in the repayment of an extension of credit; or

(B) acts as a surety with respect to an extension of credit;

to a nonaffiliated person.

(8) A person that provides title insurance and that acquires an underground storage tank as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(b) "Lender", for purposes of IC 13-24-1, means any of the following:

(1) An insured depository institution (as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)).

(2) An insured credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(3) A bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(4) A leasing or trust company that is an affiliate of an insured depository institution.

(5) A person (including a successor or assignee of the person) that:

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(A) makes a bona fide extension of credit to; or

(B) takes or acquires a security interest from;

a nonaffiliated person.

(6) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or an entity that buys or sells loans or interests in loans in a bona fide manner.

(7) A person that:

(A) insures or guarantees against a default in the repayment of an extension of credit; or

(B) acts as a surety with respect to an extension of credit;

to a nonaffiliated person.

(8) A person that provides title insurance and that acquires a petroleum facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(c) "Lender", for purposes of IC 13-25-3, means a person that provides loans secured by:

(1) an interest in property; or

(2) an assignment of beneficial interest in a land trust.

(d) "Lender", for purposes of IC 13-25-4, means any of the following:

(1) An insured depository institution (as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)).

(2) An insured credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(3) A bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(4) A leasing or trust company that is an affiliate of an insured depository institution.

(5) A person (including a successor or assignee of the person) that:

(A) makes a bona fide extension of credit to; or

(B) takes or acquires a security interest from;

a nonaffiliated person.

(6) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or an entity that buys or sells loans or interests in loans in a bona fide manner.

(7) A person that:

(A) insures or guarantees against a default in the repayment of an extension of credit; or

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(B) acts as a surety with respect to an extension of credit;

to a nonaffiliated person.

(8) A person that provides title insurance and that acquires a vessel or facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

SECTION 6. IC 13-11-2-147.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 147.5. "Operational function", for purposes of sections 151.2, 151.3, and 151.4 of this chapter, IC 13-23-13-14, IC 13-24-1-10, and IC 13-25-4-8.2, includes a function such as that of a:**

(1) facility manager;

(2) plant manager;

(3) operations manager;

(4) chief operating officer; or

(5) chief executive officer.

SECTION 7. IC 13-11-2-148, AS ADDED BY P.L.1-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 148. (a) "Operator", for purposes of IC 13-18-10, means the person in direct or responsible charge or control of one (1) or more confined feeding operations.

(b) "Operator", for purposes of IC 13-18-11 and environmental management laws, means the person in direct or responsible charge and supervising the operation of:

(1) a water treatment plant;

(2) a wastewater treatment plant; or

(3) a water distribution system.

(c) "Operator", for purposes of IC 13-20-6, means a corporation, a limited liability company, a partnership, a business association, a unit, or an individual who is a sole proprietor that is one (1) of the following:

(1) A broker.

(2) A person who manages the activities of a transfer station that receives municipal waste.

(3) A transporter.

(d) "Operator", for purposes of IC 13-23, **except as provided in subsection (e),** means a person:

(1) in control of; or

(2) having responsibility for;

the daily operation of an underground storage tank.

(e) "Operator", for purposes of IC 13-23-13, does not include

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a person who:

(1) does not participate in the management of an underground storage tank;

(2) is otherwise not engaged in the:

(A) production;

(B) refining; and

(C) marketing;

of regulated substances; and

(3) holds evidence of ownership, primarily to protect the owner's security interest in the tank.

SECTION 8. IC 13-11-2-151, AS ADDED BY P.L.1-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 151. (a) "Owner or operator", for purposes of IC 13-24-1, means the following:

(1) For a petroleum facility, a person who owns or operates the facility.

(2) For a facility where title or control has been conveyed because of:

(A) bankruptcy;

(B) foreclosure;

(C) tax delinquency;

(D) abandonment; or

(E) a similar means;

to a unit of state or local government, a person who owned, operated, or otherwise controlled the facility immediately before title or control was conveyed.

(b) Subject to subsection (c), the term does not include a unit of federal, state, or local government that acquired ownership or control involuntarily through:

(1) bankruptcy;

(2) tax delinquency;

(3) abandonment; or

(4) other circumstances in which the government unit involuntarily acquired title because of the unit's function as sovereign.

(c) The term includes a unit of federal, state, or local government that causes or contributes to the release or threatened release of a substance. The unit of federal, state, or local government is subject to IC 13-24-1:

(1) in the same manner; and

(2) to the same extent;

as a nongovernmental entity under IC 13-24-1.

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(d) The term does not include a person who:

(1) does not participate in the management of a petroleum facility;

(2) is otherwise not engaged in the:

(A) production;

(B) refining; and

(C) marketing;

of petroleum; and

(3) holds evidence of ownership in a petroleum facility, primarily to protect the owner's security interest in the petroleum facility.

SECTION 9. IC 13-11-2-151.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 151.2. (a) "Participate in management", for purposes of IC 13-23-13, means actually participating in the management or operational affairs of an underground storage tank.**

(b) The term does not include the following:

(1) Merely having the capacity to influence, or the unexercised right to control, underground storage operations.

(2) Performing an act or failing to perform an act before the time at which a security interest is created in an underground storage tank.

(3) Holding a security interest or abandoning a security interest.

(4) Including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, a warranty, or another term or condition that relates to environmental compliance.

(5) Monitoring or enforcing the terms and conditions of the extension of credit or security interest.

(6) Monitoring or undertaking at least one (1) inspection of an underground storage tank.

(7) Requiring a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the underground storage tank prior to, during, or on the expiration of the term of the extension of credit.

(8) Providing financial advice or other advice or counseling in an effort to mitigate, prevent, or cure default or decrease in the value of an underground storage tank.

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(9) Restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance.

(10) Exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement.

(11) Conducting a response action under Section 107(d) of CERCLA (42 U.S. C. 9607(d)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, unless the person conducting the response action assumes or manifests responsibility:

(A) for the overall management of the underground storage tank, encompassing day to day decision making with respect to environmental compliance; or

(B) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the underground storage tank other than the function of environmental compliance.

(c) As used in this section, "extension of credit" includes a lease finance transaction:

(1) in which the lessor does not initially select the leased underground storage tank and does not during the lease term control the daily operations or maintenance of the underground storage tank; or

(2) that conforms with regulations issued by:

(A) the appropriate federal banking agency or the appropriate state bank supervisor (as those terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813); or

(B) the National Credit Union Administration Board.

SECTION 10. IC 13-11-2-151.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 151.3. (a) "Participate in management", for purposes of IC 13-24-1, means actually participating in the management or operational affairs of a petroleum facility.**

(b) The term does not include the following:

(1) Merely having the capacity to influence, or the unexercised right to control, petroleum facility operations.

(2) Performing an act or failing to perform an act before the time at which a security interest is created in a petroleum

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facility.

(3) Holding a security interest or abandoning a security interest.

(4) Including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, a warranty, or another term or condition that relates to environmental compliance.

(5) Monitoring or enforcing the terms and conditions of the extension of credit or security interest.

(6) Monitoring or undertaking at least one (1) inspection of a petroleum facility.

(7) Requiring a response action or other lawful means of addressing the release or threatened release of petroleum in connection with the petroleum facility prior to, during, or on the expiration of the term of the extension of credit.

(8) Providing financial advice or other advice or counseling in an effort to mitigate, prevent, or cure default or decrease in the value of a petroleum facility.

(9) Restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance.

(10) Exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement.

(11) Conducting a response action under Section 107(d) of CERCLA (42 U.S. C. 9607(d)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, unless the person conducting the response action assumes or manifests responsibility:

(A) for the overall management of the petroleum facility, encompassing day to day decision making with respect to environmental compliance; or

(B) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the petroleum facility other than the function of environmental compliance.

(c) As used in this section, "extension of credit" includes a lease finance transaction:

(1) in which the lessor does not initially select the leased petroleum facility and does not during the lease term control the daily operations or maintenance of the petroleum facility; or

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(2) that conforms with regulations issued by:

(A) the appropriate federal banking agency or the appropriate state bank supervisor (as those terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813); or

(B) the National Credit Union Administration Board.

SECTION 11. IC 13-11-2-151.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 151.4. (a) "Participate in management", for purposes of IC 13-25-4, means actually participating in the management or operational affairs of a vessel or facility.**

(b) The term does not include the following:

(1) Merely having the capacity to influence, or the unexercised right to control, vessel or facility operations.

(2) Performing an act or failing to perform an act before the time at which a security interest is created in a vessel or facility.

(3) Holding a security interest or abandoning a security interest.

(4) Including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, a warranty, or another term or condition that relates to environmental compliance.

(5) Monitoring or enforcing the terms and conditions of the extension of credit or security interest.

(6) Monitoring or undertaking at least one (1) inspection of a vessel or facility.

(7) Requiring a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the vessel or facility before, during, or on the expiration of the term of the extension of credit.

(8) Providing financial advice or other advice or counseling in an effort to mitigate, prevent, or cure default or decrease in the value of a vessel or facility.

(9) Restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance.

(10) Exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement.

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(11) Conducting a response action under Section 107(d) of CERCLA (42 U.S. C. 9607(d)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, unless the person conducting the response action assumes or manifests responsibility:

(A) for the overall management of the vessel or facility, encompassing day to day decision making with respect to environmental compliance; or

(B) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the vessel or facility other than the function of environmental compliance.

(c) As used in this section, "extension of credit" includes a lease finance transaction:

(1) in which the lessor does not initially select the leased vessel or facility and does not during the lease term control the daily operations or maintenance of the vessel or facility; or

(2) that conforms with regulations issued by:

(A) the appropriate federal banking agency or the appropriate state bank supervisor (as those terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813); or

(B) the National Credit Union Administration Board.

SECTION 12. IC 13-11-2-197.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 197.7. "Security interest", for purposes of sections 119, 148, 151.2, 151.3, and 151.4 of this chapter, IC 13-23-13-14, IC 13-24-1-10 and IC 13-25-4-8.2, includes:**

(1) a right under a:

(A) mortgage;

(B) deed of trust;

(C) assignment;

(D) judgment lien;

(E) pledge;

(F) security agreement;

(G) factoring agreement; or

(H) lease; and

(2) any other right accruing to a person to secure:

(A) the repayment of money;

(B) the performance of a duty; or

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(C) any other obligation;

by a nonaffiliated person.

SECTION 13. IC 13-23-13-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 14. For purposes of IC 13-11-2-148(e) and IC 13-11-2-150(b), a person that is a lender and that holds evidence of ownership primarily to protect a security interest in an underground storage tank shall be considered to participate in management (as defined in IC 13-11-2-151.2) of the underground storage tank only if, while the borrower is still in possession of the underground storage tank encumbered by the security interest, the person:**

(1) exercises decision making control over the environmental compliance related to the underground storage tank such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the underground storage tank; or

(2) exercises control at a level comparable to that of a manager of the underground storage tank such that the person has assumed or manifested responsibility:

(A) for the overall management of the underground storage tank encompassing day to day decision making with respect to environmental compliance; or

(B) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the underground storage tank other than the function of environmental compliance.

SECTION 14. IC 13-23-13-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 15. (a) The liability of a fiduciary under this title for the release or threatened release of a hazardous substance at, from, or in connection with an underground storage tank held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.**

(b) Subsection (a) does not apply to the extent that a person is liable under this title independently of the person's ownership of an underground storage tank as a fiduciary or actions taken in a fiduciary capacity.

(c) Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of a hazardous substance if negligence of a fiduciary causes or contributes to the release or

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threatened release.

(d) A fiduciary is not liable in its personal capacity under this title for any of the following:

(1) Undertaking or directing another person to undertake a response action under 42 U.S.C. 9607(d)(1) or under the direction of an on-scene coordinator designated under the National Contingency Plan.

(2) Undertaking or directing another person to undertake other lawful means of addressing a hazardous substance in connection with the underground storage tank.

(3) Terminating the fiduciary relationship.

(4) Including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying, or enforcing the term or condition.

(5) Monitoring or undertaking at least one (1) inspection of the underground storage tank.

(6) Providing financial advice or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary.

(7) Restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship.

(8) Administering, as a fiduciary, an underground storage tank that was contaminated before the fiduciary relationship began.

(9) Declining to take any of the actions referred to in subdivisions (2) through (8).

(e) This section does not apply to a person if the person:

(1) acts in a capacity other than:

(A) a fiduciary capacity; or

(B) a beneficiary capacity;

and, in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(2) is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation and incidental benefits permitted under other applicable law.

(f) This section does not preclude a claim against the assets of the estate or trust administered by:

(1) the fiduciary; or

(2) a nonemployee agent or independent contractor retained by a fiduciary.

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(g) This section does not:

(1) affect the rights, immunities, or other defenses that are available under:

(A) this title; or

(B) other law that is applicable to a person subject to this chapter; or

(2) create:

(A) any liability for a person; or

(B) a private right of action against a fiduciary or any other person.

SECTION 15. IC 13-24-1-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 10. A person that is a lender and that holds evidence of ownership primarily to protect a security interest in a petroleum facility may be considered to participate in the management (as defined in IC 13-11-2-151.3) of the petroleum at the petroleum facility only if, while the borrower is still in possession of the petroleum facility encumbered by the security interest, the person:**

(1) exercises decision making control over the environmental compliance related to the petroleum facility such that the person has undertaken responsibility for the petroleum handling or disposal practices related to the petroleum facility; or

(2) exercises control at a level comparable to that of a manager of the petroleum facility such that the person has assumed or manifested responsibility:

(A) for the overall management of the petroleum facility encompassing day to day decision making with respect to environmental compliance; or

(B) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the petroleum facility other than the function of environmental compliance.

SECTION 16. IC 13-24-1-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 11. (a) The liability of a fiduciary under this title for the release or threatened release of petroleum at, from, or in connection with a petroleum facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.**

(b) Subsection (a) does not apply to the extent that a person is

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liable under this title independently of:

(1) the person's ownership of the petroleum facility as a fiduciary; or

(2) actions taken in a fiduciary capacity.

(c) Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of petroleum if negligence of a fiduciary causes or contributes to the release or threatened release.

(d) A fiduciary is not liable in its personal capacity under this title for any of the following:

(1) Undertaking or directing another person to undertake a response action under 42 U.S.C. 9607(d)(1) or under the direction of an on-scene coordinator designated under the National Contingency Plan.

(2) Undertaking or directing another person to undertake other lawful means of addressing a hazardous substance in connection with the petroleum facility.

(3) Terminating the fiduciary relationship.

(4) Including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying, or enforcing the term or condition.

(5) Monitoring or undertaking at least one (1) inspection of the petroleum facility.

(6) Providing financial advice or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary.

(7) Restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship.

(8) Administering, as a fiduciary, a vessel or facility that was contaminated before the fiduciary relationship began.

(9) Declining to take any of the actions referred to in subdivisions (2) through (8).

(e) This section does not apply to a person if the person:

(1) acts in a capacity other than:

(A) a fiduciary capacity; or

(B) a beneficiary capacity;

and, in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(2) is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation and incidental benefits permitted under other applicable law.

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(f) This section does not preclude a claim against the assets of the estate or trust administered by:

(1) the fiduciary; or

(2) a nonemployee agent or independent contractor retained by a fiduciary.

(g) This section does not:

(1) affect the rights, immunities, or other defenses that are available under:

(A) this title; or

(B) other law that is applicable to a person subject to this chapter; or

(2) create:

(A) any liability for a person; or

(B) a private right of action against a fiduciary or any other person.

SECTION 17. IC 13-25-4-8, AS AMENDED BY P.L.59-1997, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) Except as provided in subsection (b), (c), or (d), a person that is liable under Section 107(a) of CERCLA (42 U.S.C. 9607(a)) for:

(1) the costs of removal or remedial action incurred by the commissioner consistent with the national contingency plan;

(2) the costs of any health assessment or health effects study carried out by or on behalf of the commissioner under Section 104(i) of CERCLA (42 U.S.C. 9604(i)); or

(3) damages for:

(A) injury to;

(B) destruction of; or

(C) loss of;

natural resources of Indiana;

is liable, in the same manner and to the same extent, to the state under this section.

(b) The exceptions provided by Section 107(b) of CERCLA (42 U.S.C. 9607(b)) to liability otherwise imposed by Section 107(a) of CERCLA (42 U.S.C. 9607(a)) are equally applicable to any liability otherwise imposed under subsection (a).

(c) Notwithstanding any liability imposed by the environmental management laws, **a lender,** a secured or unsecured creditor, or a fiduciary is not liable under the environmental management laws, in connection with the release or threatened release of a hazardous substance from a facility unless **the lender,** the fiduciary, or creditor ~~exercised actual and direct managerial control over the: (1) use; (2)~~

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~~generation; (3) treatment; (4) storage; or (5) disposal;~~ **has participated in the management** of the hazardous substance at the facility.

(d) Notwithstanding any liability imposed by the environmental management laws, the liability of a fiduciary for a release or threatened release of a hazardous substance from a facility that is held by the fiduciary in its fiduciary capacity may be satisfied only from the assets held by the fiduciary in the same estate or trust as the facility that gives rise to the liability.

(e) A political subdivision (as defined in IC 36-1-2-13) is not liable to the state under this section for costs or damages associated with the presence of a hazardous substance on, in, or at a property in which the political subdivision acquired an interest in the property:

(1) under IC 6-1.1-24 or IC 6-1.1-25, bankruptcy, abandonment, or other circumstances in which the political subdivision involuntarily acquired an interest in the property; or

(2) to conduct remedial actions on a brownfield;

after the hazardous substance was disposed of or placed on, in, or at the property.

SECTION 18. IC 13-25-4-8.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 8.2. A person that is a lender and that holds evidence of ownership primarily to protect a security interest in a vessel or facility may be considered to participate in the management (as defined in IC 13-11-2-151.4) of the hazardous substance at the facility only if, while the borrower is still in possession of the vessel or facility encumbered by the security interest, the person:**

(1) exercises decision making control over the environmental compliance related to the vessel or facility such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the vessel or facility; or

(2) exercises control at a level comparable to that of a manager of the vessel or facility such that the person has assumed or manifested responsibility:

(A) for the overall management of the vessel or facility encompassing day to day decision making with respect to environmental compliance; or

(B) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the vessel or facility other than the function of environmental compliance.

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SECTION 19. IC 13-25-4-8.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 8.4. (a) The liability of a fiduciary under this title for the release or threatened release of a hazardous substance at, from, or in connection with a vessel or facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.**

(b) Subsection (a) does not apply to the extent that a person is liable under this title independently of the person's ownership of a vessel or facility as a fiduciary or actions taken in a fiduciary capacity.

(c) Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of a hazardous substance if negligence of a fiduciary causes or contributes to the release or threatened release.

(d) A fiduciary is not liable in its personal capacity under this title for any of the following:

(1) Undertaking or directing another person to undertake a response action under 42 U.S.C. 9607(d)(1) or under the direction of an on-scene coordinator designated under the National Contingency Plan.

(2) Undertaking or directing another person to undertake other lawful means of addressing a hazardous substance in connection with the vessel or facility.

(3) Terminating the fiduciary relationship.

(4) Including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying, or enforcing the term or condition.

(5) Monitoring or undertaking at least one (1) inspection of the vessel or facility.

(6) Providing financial advice or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary.

(7) Restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship.

(8) Administering, as a fiduciary, a vessel or facility that was contaminated before the fiduciary relationship began.

(9) Declining to take any of the actions referred to in subdivisions (2) through (8).

(e) This section does not apply to a person if the person:

(1) acts in a capacity other than:

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(A) a fiduciary capacity; or

(B) a beneficiary capacity;

and, in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(2) is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation and incidental benefits permitted under other applicable law.

(f) This section does not preclude a claim against the assets of the estate or trust administered by:

(1) the fiduciary; or

(2) a nonemployee agent or independent contractor retained by a fiduciary.

(g) This section does not:

(1) affect the rights, immunities, or other defenses that are available under:

(A) this title; or

(B) other law that is applicable to a person subject to this chapter; or

(2) create:

(A) any liability for a person; or

(B) a private right of action against a fiduciary or any other person.

SECTION 20. IC 13-24-1-9 IS REPEALED [EFFECTIVE JULY 1, 1998].

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