

HOUSE BILL NO. 4096

January 29, 2019, Introduced by Reps. Sowerby, Ellison, Wittenberg, Hood, Pohutsky, Robinson, Love, Shannon, Brenda Carter, Chirkun, Pagan, Clemente, Bolden, Hammoud, Peterson, Hoadley, Haadsma, Rabhi and Cynthia Johnson and referred to the Committee on Natural Resources and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 3109 and 3115 (MCL 324.3109 and 324.3115),
section 3109 as amended by 2014 PA 536 and section 3115 as amended
by 2004 PA 143.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 3109. (1) A person shall not directly or indirectly
- 2 discharge into the waters of the state a substance that is or may
- 3 become injurious to any of the following:

1 (a) To the public health, safety, or welfare.

2 (b) To domestic, commercial, industrial, agricultural,
3 recreational, or other uses that are being made or may be made of
4 such waters.

5 (c) To the value or utility of riparian lands.

6 (d) To livestock, wild animals, birds, fish, aquatic life, or
7 plants or to their growth or propagation.

8 (e) To the value of fish and game.

9 (2) The discharge of any raw sewage of human origin, directly
10 or indirectly, into any of the waters of the state shall be
11 considered prima facie evidence of a violation of this part by the
12 municipality in which the discharge originated unless the discharge
13 is ~~permitted~~**authorized** by an order or rule of **or a valid permit**
14 **issued by** the department. If ~~the~~**an unauthorized** discharge is not
15 the subject of a valid permit issued by the department, a
16 municipality responsible for the discharge ~~may be~~**is** subject to the
17 remedies provided in section 3115. If the discharge is the subject
18 of a valid permit issued by the department ~~pursuant to~~**under**
19 section 3112, and is in violation of that permit, a municipality
20 responsible for the discharge is subject to the penalties
21 prescribed in section 3115.

22 (3) Notwithstanding subsection (2), a municipality is not
23 responsible or subject to the remedies or penalties provided in
24 section 3115 under either of the following circumstances:

25 (a) The discharge is an unauthorized discharge from a sewerage
26 system as defined in section 4101 that is permitted under this part
27 and owned by a party other than the municipality, unless the
28 municipality has accepted responsibility in writing for the
29 sewerage system and, with respect to the civil fine and penalty

1 under section 3115, the municipality has been notified in writing
2 by the department of its responsibility for the sewerage system.

3 (b) The discharge is from 3 or fewer on-site wastewater
4 treatment systems.

5 (4) Unless authorized by a permit, order, or rule of the
6 department, the discharge into the waters of this state of any
7 medical waste, as defined in part 138 of the public health code,
8 1978 PA 368, MCL 333.13801 to 333.13832, is prima facie evidence of
9 a violation of this part and subjects the responsible person to the
10 penalties prescribed in section 3115.

11 (5) Unless a discharge is authorized by a permit, order, or
12 rule of the department, the discharge into the waters of this state
13 from an oceangoing vessel of any ballast water is prima facie
14 evidence of a violation of this part and subjects the responsible
15 person to the penalties prescribed in section 3115.

16 **(6) The discharge of petroleum into the waters of this state**
17 **from a pipeline that crosses over, through, or under the waters of**
18 **the state is prima facie evidence of a violation of this part and**
19 **subjects the responsible person to the penalties prescribed in**
20 **section 3115.**

21 (7) ~~(6)~~—A violation of this section is prima facie evidence of
22 the existence of a public nuisance and in addition to the remedies
23 provided for in this part may be abated according to law in an
24 action brought by the attorney general in a court of competent
25 jurisdiction.

26 (8) ~~(7)~~—As used in this section, "on-site wastewater treatment
27 system" means a system of components, other than a sewerage system
28 as defined in section 4101, used to collect and treat sanitary
29 sewage or domestic equivalent wastewater from 1 or more dwellings,

1 buildings, or structures and discharge the resulting effluent to a
2 soil dispersal system on property owned by or under the control of
3 the same individual or entity that owns or controls the dwellings,
4 buildings, or structures.

5 Sec. 3115. (1) The department may request the attorney general
6 to commence a civil action for appropriate relief, including a
7 permanent or temporary injunction, for a violation of this part or
8 a provision of a permit or order issued or rule promulgated under
9 this part. An action under this subsection may be brought in the
10 circuit court for the county of Ingham or for the county in which
11 the defendant is located, resides, or is doing business. If
12 requested by the defendant within 21 days after service of process,
13 the court shall grant a change of venue to the circuit court for
14 the county of Ingham or for the county in which the alleged
15 violation occurred, is occurring, or, in the event of a threat of
16 violation, will occur. The court has jurisdiction to restrain the
17 violation and to require compliance. In addition to any other
18 relief granted under this subsection, the court, except as
19 otherwise provided in this subsection, shall impose a civil fine of
20 not less than \$2,500.00 and the court may award reasonable attorney
21 fees and costs to the prevailing party. However, all of the
22 following apply:

23 (a) The maximum **civil** fine imposed by the court shall be not
24 more than \$25,000.00 per day of violation, **except if the violation**
25 **involves the discharge of petroleum into the waters of this state,**
26 **the court may impose a civil fine of not more than \$500,000.00 per**
27 **day.**

28 (b) For a failure to report a release to the department or to
29 the primary public safety answering point under section 3111b(1),

1 the court shall impose a civil fine of not more than
2 ~~\$2,500.00.~~ **\$50,000.00.**

3 (c) For a failure to report a release to the local health
4 department under section 3111b(2), the court shall impose a civil
5 fine of not more than \$500.00.

6 (2) A person who at the time of the violation knew or should
7 have known that he or she discharged a substance contrary to this
8 part, or contrary to a permit or order issued or rule promulgated
9 under this part, or who intentionally makes a false statement,
10 representation, or certification in an application for or form
11 pertaining to a permit or in a notice or report required by the
12 terms and conditions of an issued permit, or who intentionally
13 renders inaccurate a monitoring device or record required to be
14 maintained by the department, is guilty of a felony and shall be
15 fined not less than \$2,500.00 or more than \$25,000.00 for each
16 violation. The court may impose an additional fine of not more than
17 \$25,000.00 for each day during which the unlawful discharge
18 occurred. If the conviction is for a violation committed after a
19 first conviction of the person under this subsection, the court
20 shall impose a fine of not less than \$25,000.00 per day and not
21 more than \$50,000.00 per day of violation. Upon conviction, in
22 addition to a fine, the court in its discretion may sentence the
23 defendant to imprisonment for not more than 2 years or impose
24 probation upon ~~a person for a violation of this part.~~ **the**
25 **defendant.** With the exception of the issuance of criminal
26 complaints, issuance of warrants, and the holding of an
27 arraignment, the circuit court for the county in which the
28 violation occurred has exclusive jurisdiction. However, the person
29 ~~shall is~~ not ~~be~~ subject to the penalties of this subsection if the

1 discharge of the effluent is in conformance with and obedient to a
2 rule, order, or permit of the department. In addition to a fine,
3 the attorney general may file a civil suit in a court of competent
4 jurisdiction to recover the full value of the injuries done to the
5 natural resources of the state and the costs of surveillance and
6 enforcement by the state resulting from the violation.

7 (3) Upon a finding by the court that the actions of a civil
8 defendant pose or posed a substantial endangerment to the public
9 health, safety, or welfare, the court shall impose, in addition to
10 the sanctions set forth in subsection (1), a fine of not less than
11 \$500,000.00 and not more than \$5,000,000.00.

12 (4) Upon a finding by the court that the actions of a criminal
13 defendant pose or posed a substantial endangerment to the public
14 health, safety, or welfare, the court shall impose, in addition to
15 the penalties set forth in subsection (2), a fine of not less than
16 \$1,000,000.00 and, in addition to a fine, a sentence of 5 years'
17 imprisonment.

18 (5) To find a defendant civilly or criminally liable for
19 substantial endangerment under subsection (3) or (4), the court
20 shall determine that the defendant knowingly or recklessly acted in
21 such a manner as to cause a danger of death or serious bodily
22 injury and that either of the following occurred:

23 (a) The defendant had an actual awareness, belief, or
24 understanding that his or her conduct would cause a substantial
25 danger of death or serious bodily injury.

26 (b) The defendant acted in gross disregard of the standard of
27 care that any reasonable person should observe in similar
28 circumstances.

29 (6) Knowledge possessed by a person other than the defendant

1 under subsection (5) may be attributable to the defendant if the
2 defendant took affirmative steps to shield himself or herself from
3 the relevant information.

4 (7) A civil fine or other award ordered paid ~~pursuant~~
5 **according** to this section shall do both of the following:

6 (a) Be payable to the state of Michigan and credited to the
7 general fund.

8 (b) Constitute a lien on any property, of any nature or kind,
9 owned by the defendant.

10 (8) A lien under subsection (7)(b) shall take effect and have
11 priority over all other liens and encumbrances except those filed
12 or recorded ~~prior to~~ **before** the date of judgment only if notice of
13 the lien is filed or recorded as required by state or federal law.

14 (9) A lien filed or recorded ~~pursuant to~~ **under** subsection (8)
15 shall be terminated according to the procedures required by state
16 or federal law within 14 days after the fine or other award ordered
17 to be paid is paid.

18 (10) In addition to any other method of collection, any fine
19 or other award ordered paid may be recovered by right of setoff to
20 any debt owed to the defendant by ~~the~~ **this** state, ~~of Michigan,~~
21 including the right to a refund of income taxes paid.

22 Enacting section 1. This amendatory act takes effect 90 days
23 after the date it is enacted into law.