

SENATE BILL NO. 261

April 11, 2019, Introduced by Senators POLEHANKI, BAYER and HOLLIER and referred to the Committee on Environmental Quality.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 5529, 5530, 5531, 11546, and 11549 (MCL
324.5529, 324.5530, 324.5531, 324.11546, and 324.11549), section
11546 as amended by 2006 PA 56 and section 11549 as amended by 2006
PA 58.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5529. (1) The department may assess an administrative
2 fine of ~~up to~~ **not more than** \$10,000.00, **or, if the violator is the**

1 **owner or operator of a sanitary landfill, not more than**
 2 **\$100,000.00**, for each instance of violation and, if the violation
 3 continues, for each day of continued noncompliance, if the
 4 department, on the basis of available information, finds that the
 5 person has violated or is in violation of this part or a rule
 6 promulgated **or permit or order issued** under this part. ~~has failed~~
 7 ~~to obtain a permit required under this part, violates an order~~
 8 ~~under this part, or has failed to comply with the terms of a permit~~
 9 ~~issued under this part.~~ If a single event constitutes an instance
 10 of violation of any combination of this part, **or** a rule promulgated
 11 **or permit or order issued** under this part, ~~or a permit issued or~~
 12 ~~order entered under this part,~~ the amount of the administrative
 13 fine for that single event shall not exceed \$10,000.00, **or, if the**
 14 **violation is the owner or operator of a sanitary landfill, not more**
 15 **than \$100,000.00**, for that violation. The assessment of an
 16 administrative fine may be either a part of a compliance order or a
 17 separate order issued by the department.

18 (2) The authority of the department under this section is
 19 limited to matters where the total administrative fine sought does
 20 not exceed \$100,000.00, **or, if the violator is the owner or**
 21 **operator of a sanitary landfill, \$1,000,000.00**, and the
 22 **administrative action is initiated within 12 months after** the first
 23 alleged date of violation. ~~occurred within 12 months prior to~~
 24 ~~initiation of the administrative action.~~ Except as ~~may~~ otherwise be
 25 provided by applicable law, the department shall not condition the
 26 issuance of a permit on the payment of an administrative fine
 27 assessed pursuant to this section.

28 (3) Within 28 days ~~of~~ **after** being assessed an administrative
 29 fine ~~from~~ **by** the department, a person may file a petition with the

department for review of ~~this~~**the** fine. Review of the fine shall be conducted pursuant to the contested case procedures of **chapter 4 of** the administrative procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws.~~ **1969 PA 306, MCL 24.271 to 24.288.** If issued as part of a consent order issued pursuant to section 5528, only the amount of the administrative fine and the alleged violation on which the fine is based are subject to the contested case procedures. ~~of Act No. 306 of the Public Acts of 1969.~~

Sec. 5530. (1) The attorney general may commence a civil action against a person for appropriate relief, including injunctive relief, and a civil fine as provided in subsection (2) for any of the following:

- (a) Violating this part or a rule promulgated under this part.
- (b) Failure to obtain a permit under this part.
- (c) Failure to comply with the terms of a permit or an order issued under this part.
- (d) Failure to pay an air quality fee or comply with a filing requirement under this part.
- (e) Failure to comply with the inspection, entry, and monitoring requirements of this part.
- (f) A violation described in section 5518(2).

(2) In addition to any other relief authorized under this section, the court may impose a civil fine of not more than \$10,000.00, ~~for each instance of violation and, if the violation continues, for each day of continued violation.~~**or, if the defendant is the owner or operator of a sanitary landfill, not more than \$100,000.00.**

(3) In addition to other relief authorized under this section,

1 the attorney general may, at the request of the department, file an
2 action in a court of competent jurisdiction to recover the full
3 value of the injuries done to the natural resources of ~~the~~**this**
4 state.

5 (4) In issuing a final order in an action brought pursuant to
6 this section, the court may award costs of litigation, including,
7 but not limited to, reasonable attorney and expert witness fees, to
8 the prevailing or substantially prevailing party if the court
9 determines that such an award is appropriate.

10 (5) A civil action brought under this section may be brought
11 in the county in which the defendant is located, resides, or is
12 doing business ~~or~~ in the circuit court for the county of Ingham,
13 ~~or~~ in the county in which the registered office of a defendant
14 corporation is located, or in the county where the violation
15 occurred.

16 (6) General defenses and affirmative defenses ~~or~~ that may
17 otherwise apply under state law may apply in an action brought
18 under this section as determined to be appropriate by a court of
19 competent jurisdiction.

20 (7) Fines imposed under this section shall be assessed for
21 each instance of violation and, if the violation is continuous,
22 shall be assessable up to the maximum amount for each day of
23 violation.

24 Sec. 5531. (1) A person who knowingly violates any requirement
25 or prohibition of an applicable requirement of this part or a rule
26 promulgated under this part or ~~who fails to obtain or comply with~~
27 **of** a permit, ~~or comply with a final order,~~ or order of
28 determination issued under this part is guilty of a misdemeanor
29 punishable by a fine of not more than \$10,000.00, **or, if the person**

1 **is the owner or operator of a sanitary landfill, not more than**
2 **\$100,000.00, per day, for each violation.**

3 (2) A person who knowingly makes a false material statement,
4 representation, or certification in, or omits material information
5 from, or knowingly alters, conceals, or fails to file any notice,
6 application, record, report, plan, or other document required to be
7 submitted pursuant to this part or a rule promulgated under this
8 part, or who knowingly fails to notify or report information
9 required to be submitted under this part or a rule promulgated
10 under this part, or who knowingly falsifies, tampers with, renders
11 inaccurate, or knowingly fails to install any monitoring device or
12 method required under this part or a rule promulgated under this
13 part, is guilty of a misdemeanor punishable by imprisonment for not
14 more than 1 year and a fine of not more than \$10,000.00, **or, if the**
15 **person is the owner or operator of a sanitary landfill, not more**
16 **than \$100,000.00, per day, for each violation.**

17 (3) A person who knowingly fails to pay any air quality fee
18 owed under this part is guilty of a misdemeanor punishable by a
19 fine of not more than \$10,000.00, **or, if the person is the owner or**
20 **operator of a sanitary landfill, not more than \$100,000.00.**

21 (4) A person who knowingly releases into the ambient air any
22 specific chemical or any hazardous air pollutant listed in 40
23 C.F.R. part 68, section 68.130 (January 19, 1993) pursuant to the
24 authority of section 112(r) of part A of title I of the clean air
25 act, 84 Stat. 1685, 42 U.S.C. 7412, or both, contrary to applicable
26 federal, state, or local requirements, or contrary to a permit
27 issued under this part, and because of the quantities or
28 concentrations of the substance released knows or should have known
29 at the time that the release places another person in imminent

1 danger of death or serious bodily injury is guilty of a felony
2 punishable by imprisonment for not more than 2 years or a fine of
3 not more than \$10,000.00, **or, if the person is the owner or**
4 **operator of a sanitary landfill, not more than \$100,000.00,** or
5 both.

6 (5) A person who knowingly releases or causes the release into
7 the ambient air **of** any specific chemical or any hazardous air
8 pollutant listed in 40 C.F.R. ~~part 68, section 68.130 (January 19,~~
9 ~~1993)~~ **CFR 68.130 (March 13, 2000)** pursuant to the authority of
10 section 112(r) ~~of part A of title I of the clean air act, 84 Stat.~~
11 ~~1685, 42 U.S.C. 42 USC 7412,~~ or both, contrary to applicable
12 federal, state, or local requirements, or contrary to a permit
13 issued under this part, ~~and~~ who knows or should have known at the
14 time that the release places another person in imminent danger of
15 death or serious bodily injury, ~~and the release results whose~~
16 **actions do result** in death or serious bodily injury to any person,
17 is guilty of a felony punishable by imprisonment for not more than
18 6 years or a fine of not more than \$25,000.00, **or, if the person is**
19 **the owner or operator of a sanitary landfill, not more than**
20 **\$250,000.00,** or both.

21 (6) A person who knowingly releases into the ambient air any
22 specific chemical or any hazardous air pollutant listed in 40
23 C.F.R. ~~part 68, section 68.130 (January 19, 1993)~~ **CFR 68.130 (March**
24 **13, 2000)** pursuant to the authority of section 112(r) ~~of part A of~~
25 ~~title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 42 USC 7412,~~
26 or both, contrary to applicable federal, state, or local
27 requirements, or contrary to a permit issued under this part, ~~and~~
28 who intended at that time to place another person in imminent
29 danger of death or serious bodily injury, and whose actions do

1 result in death or cause serious bodily injury to any person is
2 guilty of a felony punishable by imprisonment for not more than 15
3 years or a fine of not more than \$250,000.00, **or, if the person is**
4 **the owner or operator of a sanitary landfill, not more than**
5 **\$2,500,000.00, or both.**

6 (7) In determining whether a defendant who is an individual
7 knew that the violation placed another person in imminent danger of
8 death or serious bodily injury as required under subsections (4),
9 (5), and (6), the defendant is responsible only for actual
10 awareness or actual belief possessed, and knowledge possessed by a
11 person other than the defendant, but not by the defendant, may not
12 be attributed to the defendant. However, in proving a defendant's
13 possession of actual knowledge, circumstantial evidence may be
14 used, including evidence that the defendant took affirmative steps
15 to be shielded from relevant information.

16 (8) Fines imposed under this section shall be assessed for
17 each instance of violation and, if the violation is continuous,
18 shall be assessable up to the maximum amount for each day of
19 violation.

20 (9) A defendant may establish an affirmative defense to a
21 prosecution under this section by showing by a preponderance of the
22 evidence that the conduct charged was freely consented to by the
23 person endangered and that the danger and conduct charged were
24 reasonably foreseeable hazards of any of the following:

25 (a) An occupation, a business, or a profession.

26 (b) Medical treatment or medical or scientific experimentation
27 conducted by professionally approved methods if the person had been
28 made aware of the risks involved prior to giving consent.

29 (10) All general defenses, affirmative defenses, and bars to

1 prosecution that may otherwise apply with respect to state criminal
2 offenses may apply under this section and shall be determined by
3 the courts of this state having jurisdiction according to the
4 principles of common law as they may be interpreted in the light of
5 reason and experience. Concepts of justification and excuse
6 applicable under this section may be developed by the courts in the
7 light of reason and experience.

8 (11) Fines shall not be imposed pursuant to this section for a
9 violation that was caused by an act of God, war, strike, riot,
10 catastrophe, or other condition to which negligence or willful
11 misconduct on the part of the person was not the proximate cause.

12 (12) As used in this section:

13 (a) "Serious bodily injury" means bodily injury that involves
14 a substantial risk of death, unconsciousness, extreme physical
15 pain, protracted and obvious disfigurement or protracted loss or
16 impairment of the function of a bodily member, organ, or mental
17 faculty.

18 (b) "Specific chemical" means a hazardous air pollutant listed
19 in section 112(b)(1) ~~of Part A of title I of the clean air act, 84~~
20 ~~Stat. 1685, 42 U.S.C. 42 USC~~ 7412, except for the following
21 compounds:

22 (i) Antimony compounds.

23 (ii) Arsenic compounds (inorganic including arsine).

24 (iii) Beryllium compounds.

25 (iv) Cadmium compounds.

26 (v) Chromium compounds.

27 (vi) Cobalt compounds.

28 (vii) Coke oven emissions.

29 (viii) Cyanide compounds.

- (ix) Glycol ethers.
- (x) Lead compounds.
- (xi) Manganese compounds.
- (xii) Mercury compounds.
- (xiii) Fine mineral fibers.
- (xiv) Nickel compounds.
- (xv) Polycyclic organic matter.
- (xvi) Radionuclides (including radon).
- (xvii) Selenium compounds.

Sec. 11546. (1) The department or a health officer may request that the attorney general bring an action in the name of the people of the state, or a municipality or county may bring an action based on facts arising within its boundaries, for any appropriate relief, including injunctive relief, for a violation of this part or rules promulgated under this part.

(2) In addition to any other relief provided by this section, the court may impose on any person who violates ~~any provision of~~ this part or rules promulgated under this part or who fails to comply with any permit, license, or final order issued pursuant to this part a civil fine as follows:

(a) Except as provided in subdivision (b), a civil fine of not more than \$10,000.00, **or, if the person is the owner or operator of a landfill, not more than \$100,000.00**, for each day of violation.

(b) For a second or subsequent violation, a civil fine of not more than \$25,000.00, **or, if the person is the owner or operator of a landfill, not more than \$250,000.00**, for each day of violation.

(3) In addition to any other relief provided by this section, the court may order a person who violates this part or the rules

1 promulgated under this part to restore, or to pay to the state an
2 amount equal to the cost of restoring, the natural resources of
3 this state affected by the violation to their original condition
4 before the violation, and to pay to the state the costs of
5 surveillance and enforcement incurred by the state as a result of
6 the violation.

7 (4) In addition to any other relief provided by this section,
8 the court shall order a person who violates section 11526e to
9 return, or to pay to the state an amount equal to the cost of
10 returning, the solid waste that is the subject of the violation to
11 the country in which that waste was generated.

12 (5) This part does not preclude any person from commencing a
13 civil action based on facts that may also constitute a violation of
14 this part or the rules promulgated under this part.

15 Sec. 11549. (1) A person who violates this part, a rule
16 promulgated under this part, or a condition of a permit, license,
17 or final order issued pursuant to this part is guilty of a
18 misdemeanor punishable by a fine of not more than \$1,000.00, **or, if**
19 **the person is the owner or operator of a landfill, not more than**
20 **\$10,000.00,** for each violation and costs of prosecution and, if in
21 default of payment of fine and costs, imprisonment for not more
22 than 6 months.

23 (2) A person who knowingly violates section 11526e is guilty
24 of a felony punishable by imprisonment for not more than 2 years or
25 a fine of not more than \$5,000.00, **or, if the person is the owner**
26 **or operator of a landfill, not more than \$50,000.00,** or both.

27 (3) Each day upon which a violation described in this section
28 occurs is a separate offense.