

# HOUSE BILL NO. 4170

February 09, 2021, Introduced by Reps. Sowerby, Stone, Weiss, Camilleri, Cavanagh, Aiyash, Sneller, Brabec, Brixie, O'Neal, Pohutsky, Koleszar, Cynthia Johnson, Hammoud, Garza, Shannon, Cambensy, Hope, Brenda Carter, Hood, Morse, Young, Kuppa, Rabhi, Neeley, Bolden and Scott 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~~ **is** prima facie evidence of a violation of this part by  
12 the municipality in which the discharge originated unless the  
13 discharge is ~~permitted~~ **authorized** by an order or rule of **or a valid**  
14 **permit issued by** the department. If the discharge is not ~~the~~  
15 ~~subject of a valid permit issued by the department, so authorized,~~  
16 a municipality responsible for the discharge ~~may be~~ **is** subject to  
17 the remedies provided in section 3115. If the discharge is the  
18 subject of a valid permit issued by the department ~~pursuant to~~  
19 **under** section 3112, and is in violation of that permit, a  
20 municipality responsible for the discharge is subject to the  
21 ~~penalties prescribed in~~ **sanctions under** section 3115.

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

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

1 sewerage system and, with respect to the ~~civil fine and penalty~~  
2 **sanctions** under section 3115, the municipality has been notified in  
3 writing by the department of its responsibility for the sewerage  
4 system.

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

7 (4) Unless authorized by a permit, order, or rule of the  
8 department, the discharge into the waters of ~~this~~**the** state of any  
9 medical waste, as defined in ~~part 138~~**section 13805** of the public  
10 health code, 1978 PA 368, MCL ~~333.13801 to 333.13832,~~**333.13805**, is  
11 prima facie evidence of a violation of this part and subjects the  
12 responsible person to the ~~penalties prescribed in~~**sanctions under**  
13 section 3115.

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

19 (6) **The discharge of petroleum into the waters of the state**  
20 **from a pipeline that crosses over, through, or under the waters of**  
21 **the state is prima facie evidence of a violation of this part and**  
22 **subjects the responsible person to the sanctions under section**  
23 **3115.**

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

29 (8) ~~(7)~~As used in this section, "on-site wastewater treatment

1 system" means a system of components, other than a sewerage system  
 2 as defined in section 4101, used to collect and treat sanitary  
 3 sewage or domestic equivalent wastewater from 1 or more dwellings,  
 4 buildings, or structures and discharge the resulting effluent to a  
 5 soil dispersal system on property owned by or under the control of  
 6 the same ~~individual or entity~~ **person** that owns or controls the  
 7 dwellings, buildings, or structures.

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

26 (a) ~~The maximum~~ **Except as otherwise provided in this**  
 27 **subdivision, the civil** fine ~~imposed by the court~~ shall be not more  
 28 than \$25,000.00 per day of violation. **If the violation involves the**  
 29 **discharge of petroleum into the waters of the state, the civil fine**

1 **shall be not more than \$500,000.00 per day.**

2 (b) For a failure to report a release to ~~the department or to~~  
 3 the primary public safety answering point **or the department** under  
 4 section 3111b(1) **or rules cited in section 3111b(1)**, the court  
 5 shall impose a civil fine of not more than ~~\$2,500.00.~~ **\$50,000.00.**

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

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

1 arraignment, the circuit court for the county in which the  
2 violation occurred has exclusive jurisdiction. However, the person  
3 ~~shall-is~~ not ~~be~~-subject to the penalties of this subsection if the  
4 discharge of the effluent is in conformance with and obedient to a  
5 rule, order, or permit of the department. In addition to a fine,  
6 the attorney general may file a civil suit in a court of competent  
7 jurisdiction to recover the full value of the injuries done to the  
8 natural resources of ~~the-this~~ state and the costs of surveillance  
9 and enforcement by ~~the-this~~ state resulting from the violation.

10 (3) Upon a finding by the court that the actions of a civil  
11 defendant pose or posed a substantial endangerment to the public  
12 health, safety, or welfare, the court shall impose, in addition to  
13 the sanctions set forth in subsection (1), a fine of not less than  
14 \$500,000.00 and not more than \$5,000,000.00.

15 (4) Upon a finding by the court that the actions of a criminal  
16 defendant pose or posed a substantial endangerment to the public  
17 health, safety, or welfare, the court shall impose, in addition to  
18 the penalties set forth in subsection (2), a fine of not less than  
19 \$1,000,000.00 and, in addition to a fine, a sentence of 5 years'  
20 imprisonment.

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

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

29 (b) The defendant acted in gross disregard of the standard of

1 care that any reasonable person should observe in similar  
2 circumstances.

3 (6) Knowledge possessed by a person other than the defendant  
4 under subsection (5) may be attributable to the defendant if the  
5 defendant took affirmative steps to shield himself or herself from  
6 the relevant information.

7 (7) ~~A-Both of the following apply to a~~ civil fine or other  
8 award ordered paid ~~pursuant to-under~~ this section: ~~shall do both of~~  
9 ~~the following:~~

10 (a) ~~Be-It is~~ payable to the state of Michigan and **shall be**  
11 credited to the general fund.

12 (b) ~~Constitute-It constitutes~~ a lien on any property, of any  
13 nature or kind, owned by the defendant.

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

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

22 (10) In addition to any other method of collection, any fine  
23 or other award ordered paid may be recovered by right of setoff to  
24 any debt owed to the defendant by ~~the-this~~ state, ~~of Michigan,~~  
25 including the right to a refund of income taxes paid.

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