

# SENATE BILL NO. 124

February 10, 2021, Introduced by Senators GEISS, BAYER, POLEHANKI, BULLOCK, WOJNO, MOSS, IRWIN, ANANICH, SANTANA and BRINKS 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 3111b and 3115 (MCL 324.3111b and 324.3115),  
section 3111b as added by 2004 PA 142 and section 3115 as amended  
by 2004 PA 143.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1**       Sec. 3111b. (1) If a person is required to report a release to  
**2**       the department under part 5 of the water resources protection  
**3**       rules, R 324.2001 to R 324.2009 of the Michigan administrative

~~code, Administrative Code, or subsection (4),~~ the person **at the same time shall**, via a 9-1-1 call, ~~shall at the same time report~~ the release to the primary public safety answering point serving the jurisdiction where the release occurred.

(2) If a person described in subsection (1) is required to subsequently submit to the department a written report on the release under part 5 of the water resources protection rules, R 324.2001 to R 324.2009 of the Michigan ~~administrative code,~~

**Administrative Code, or subsection (5),** the person shall at the same time submit a copy of the report to the local health department serving the jurisdiction where the release occurred.

(3) If the department of state police or ~~other~~ **another** state agency receives notification, ~~pursuant to~~ **under** an agreement with or the laws of another state, Canada, or the province of Ontario, of the release in that other jurisdiction of a polluting material in excess of the threshold reporting quantity and if the polluting material has entered or may enter ~~surface waters or groundwaters of this waters of the~~ state, the department of state police or **the** other state agency shall contact the primary public safety answering point serving each county that may be affected by the release.

(4) **As soon as practicable, but no later than 24 hours, after detecting the total or partial collapse or other failure of a dock or wharf located in or adjacent to the waters of the state, or detecting the release of any substance that may cause pollution of the waters of the state from or as a result of the failure of a dock or wharf located in or adjacent to the waters of the state, the owner or operator of the dock or wharf, owner of the substance, or any person loading or unloading the substance at the time of the**

1 release shall notify the department by telephone. The notification  
2 must be given through the department's pollution emergency alerting  
3 service, if the service exists.

4 (5) Within 10 days after detecting failure of a dock or wharf  
5 or detecting a release described in subsection (4), a person  
6 required to notify the department under subsection (4) shall file a  
7 written report with the department and the local health department  
8 that serves the jurisdiction where the failure of the dock or wharf  
9 or the release occurred. The report must contain both of the  
10 following:

11 (a) A description of the cause and discovery of the failure of  
12 the dock or wharf or the release.

13 (b) A list of measures taken or a schedule for the completion  
14 of measures to be taken, or both, to prevent the recurrence of a  
15 similar failure of the dock or wharf or release.

16 (6) ~~(4)~~—The emergency management coordinator of each county  
17 shall develop and oversee the implementation of a plan to provide  
18 timely notification of a release required to be reported under  
19 subsection (1) or (3) to appropriate local, state, and federal  
20 agencies. In developing and overseeing the implementation of the  
21 plan, the emergency management coordinator shall consult with both  
22 of the following:

23 (a) The directors of the primary public safety answering  
24 points with jurisdiction within the county.

25 (b) Any emergency management coordinator appointed for a city,  
26 village, or township located in that county.

27 (7) ~~(5)~~—If rules promulgated under this part require a person  
28 to maintain a pollution incident prevention plan, the person shall  
29 update the plan to include the requirements of subsections (1), ~~and~~

(2), **and, if applicable, (4) and (5)**, when conducting any evaluation of the plan required by rule.

**(8)** ~~(6)~~ If a person reports to the department a release pursuant to **under** subsection (1), the department shall do both of the following:

(a) Notify the person of the requirements imposed under subsections (1) and (2) **and, if applicable, (4) and (5)**.

(b) Request that the person, even if not responsible for the release, report the release, via a 9-1-1 call, to the primary public safety answering point serving 1 of the following, as applicable:

(i) The jurisdiction where the release occurred, if known.

(ii) The jurisdiction where the release was discovered, if the jurisdiction where the release occurred is not known.

**(9)** ~~(7)~~ The department shall notify the public and interested parties, by posting on its website ~~within 30 days after the effective date of the amendatory act that added this section and by~~ other appropriate means, of all of the following:

(a) The requirements of subsections (1), ~~and (2)~~, **(4)**, and **(5)**.

(b) The relevant voice, and, if applicable, facsimile telephone numbers of the department and the national response center.

(c) The criminal and civil sanctions under section 3115 applicable to violations of subsections (1), ~~and (2)~~, **(4)**, and **(5)**.

**(10)** ~~(8)~~ Failure of the department to provide a person with the notification required under subsection ~~(6)~~ **(8)** or ~~(7)~~ **(9)** does not relieve the person of any obligation to report a release or other legal obligation.

1           (11) ~~(9)~~ The department shall biennially do both of the  
2 following:

3           (a) Evaluate the state and local reporting system established  
4 under this section.

5           (b) Submit to the standing committees of the senate and house  
6 of representatives with primary responsibility for environmental  
7 protection issues a written report on any changes recommended to  
8 the reporting system.

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

27           (a) The maximum fine imposed by the court ~~shall be~~ **must** not **be**  
28 more than \$25,000.00 per day of violation.

29           (b) For a failure to report a release to the department or to

1 the primary public safety answering point under section 3111b(1),  
2 the court shall impose a civil fine of not ~~more~~**less** than \$2,500.00  
3 **or more than \$5,000.00.**

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

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

~~shall not be~~ **is not** subject to the penalties of this subsection **for a discharge otherwise in violation of this part** if the discharge of the effluent is in conformance with and obedient to a rule, order, or permit of the department. In addition to a fine, the attorney general may file a civil suit ~~in a court of competent jurisdiction~~ to recover the full value of the injuries done to the natural resources of ~~the~~ **this** state and the costs of surveillance and enforcement by ~~the~~ **this** state resulting from the violation.

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

(4) Upon a finding by the court that the actions of a criminal defendant pose or posed a substantial endangerment to the public health, safety, or welfare, ~~the court shall impose,~~ in addition to the penalties ~~set forth in~~ **under** subsection (2), ~~a fine of the~~ **defendant shall be imprisoned for not more than 5 years and shall be fined** not less than \$1,000,000.00. ~~and, in addition to a fine, a sentence of 5 years' imprisonment.~~

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

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

(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~~**attributed** to the  
5 defendant if the defendant took affirmative steps to shield himself  
6 or herself from the relevant information.

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

9 ~~(a) Be~~**is** payable to the state of Michigan and **must be**  
10 credited to the ~~general~~**Great Lakes and rivers protection** fund  
11 **created in subsection (11).**

12 ~~(b) Constitute~~**The civil fine or other award constitutes** a  
13 lien on any property, of any nature or kind, owned by the  
14 defendant.

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

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

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

29 **(11) The Great Lakes and rivers protection fund is created**



1 within the state treasury. Civil fines collected under this section  
2 must be deposited into the fund. The state treasurer may receive  
3 money or other assets from any source for deposit into the fund.  
4 The state treasurer shall direct the investment of the fund. The  
5 state treasurer shall credit to the fund interest and earnings from  
6 fund investments. Money in the fund at the close of the fiscal year  
7 remains in the fund and does not lapse to the general fund. The  
8 department shall be the administrator of the fund for auditing  
9 purposes. The department shall expend money from the fund, upon  
10 appropriation, only for risk assessment and remediation activities  
11 for the waters of the state affected by violations of this part. As  
12 used in this subsection, "fund" means the Great Lakes and rivers  
13 protection fund.