

HOUSE BILL NO. 5839

June 04, 2020, Introduced by Reps. Tyrone Carter and Gay-Dagnogo 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 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~~



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

5 (2) If a person described in subsection (1) is required to
 6 subsequently submit to the department a written report on the
 7 release under part 5 of the water resources protection rules, R
 8 324.2001 to R 324.2009 of the Michigan ~~administrative code,~~
 9 **Administrative Code, or subsection (5)**, the person shall at the
 10 same time submit a copy of the report to the local health
 11 department serving the jurisdiction where the release occurred.

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

21 (4) **As soon as practicable, but no later than 24 hours, after**
 22 **detecting the total or partial collapse or other failure of a dock**
 23 **or wharf located in or adjacent to waters of the state, or**
 24 **detecting the release of any substance that may cause pollution of**
 25 **the waters of the state from or as a result of the failure of a**
 26 **dock or wharf located in or adjacent to waters of the state, the**
 27 **owner or operator of the dock or wharf, the owner of the substance,**
 28 **or any person loading or unloading the substance at the time of the**
 29 **release shall notify the department by telephone. The notification**



1 shall be given through the department's pollution emergency
2 alerting service, if such a service exists.

3 (5) Within 10 days after detecting failure of a dock or wharf
4 or detecting a release described in subsection (4), a person
5 required to notify the department under subsection (4) shall file a
6 written report with the department. The report shall describe the
7 cause and discovery of the failure or release and set forth the
8 measures taken or a schedule for completion of measures to be
9 taken, or both, to prevent recurrence of similar failures or
10 releases. The person shall at the same time submit a copy of the
11 report to the local health department serving the jurisdiction
12 where the failure or release occurred.

13 (6) ~~(4)~~—The emergency management coordinator of each county
14 shall develop and oversee the implementation of a plan to provide
15 timely notification of a release required to be reported under
16 subsection (1) or (3) to appropriate local, state, and federal
17 agencies. In developing and overseeing the implementation of the
18 plan, the emergency management coordinator shall consult with both
19 of the following:

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

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

24 (7) ~~(5)~~—If rules promulgated under this part require a person
25 to maintain a pollution incident prevention plan, the person shall
26 update the plan to include the requirements of subsections (1), ~~and~~
27 (2), ~~and, if applicable, (4) and (5)~~ when conducting any evaluation
28 of the plan required by rule.

29 (8) ~~(6)~~—If a person reports to the department a release



1 pursuant to subsection (1), the department shall do both of the
2 following:

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

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

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

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

12 **(9)** ~~(7)~~—The department shall notify the public and interested
13 parties, by posting on its website ~~within 30 days after the~~
14 ~~effective date of the amendatory act that added this section and by~~
15 other appropriate means, of all of the following:

16 (a) The requirements of subsections (1), ~~and (2), (4), and~~
17 **(5).**

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

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

23 **(10)** ~~(8)~~—Failure of the department to provide a person with
24 the notification required under subsection ~~(6) or (7)~~ **(8) or (9)**
25 does not relieve the person of any obligation to report a release
26 or other legal obligation.

27 **(11)** ~~(9)~~—The department shall biennially do both of the
28 following:

29 (a) Evaluate the state and local reporting system established



1 under this section.

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

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

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

26 (b) For a failure to report a release to the department or to
27 the primary public safety answering point under section 3111b(1),
28 the court shall impose a civil fine of not **less than \$2,500.00 or**
29 more than ~~\$2,500.00.~~ **\$5,000.00.**



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

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



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

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

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

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

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

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

28 (6) Knowledge possessed by a person other than the defendant
29 under subsection (5) may be ~~attributable~~**attributed** to the



1 defendant if the defendant took affirmative steps to shield himself
2 or herself from the relevant information.

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

5 ~~(a) Be~~ **is** payable to the state of Michigan and **shall be**
6 credited to the ~~general~~ **Great Lakes and rivers protection** fund
7 **created in subsection (11).**

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

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

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

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

25 **(11) The Great Lakes and rivers protection fund is created**
26 **within the state treasury. Civil fines collected under this section**
27 **shall be deposited in the fund. The state treasurer may receive**
28 **money or other assets from any source for deposit into the fund.**
29 **The state treasurer shall direct the investment of the fund. The**



1 state treasurer shall credit to the fund interest and earning from
2 fund investments. Money in the fund at the close of the fiscal year
3 shall remain in the fund and shall not lapse to the general fund.
4 The department shall be the administrator of the fund for auditing
5 purposes. The department shall expend money from the fund, upon
6 appropriation, only for risk assessment and remediation activities
7 for waters of the state affected by violations of this part.

