

HOUSE BILL NO. 4025

January 27, 2021, Introduced by Rep. Ellison 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 20138 and 20140 (MCL 324.20138 and 324.20140),
section 20138 as amended by 1995 PA 71 and section 20140 as amended
by 2000 PA 254.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20138. (1) All unpaid costs and damages for which a
2 person is liable under section 20126 constitute a lien in favor of
3 ~~the~~**this** state ~~upon~~**on** a facility that has been the subject of

1 response activity by ~~the~~**this** state and is owned by that person. A
 2 lien under this subsection has priority over all other liens and
 3 encumbrances except liens and encumbrances recorded before the date
 4 the lien under this subsection is recorded. A lien under this
 5 subsection arises when ~~the~~**this** state first incurs costs for
 6 response activity at the facility for which the person is
 7 responsible.

8 (2) If the attorney general determines that the lien provided
 9 in subsection (1) is insufficient to protect the interest of ~~the~~
 10 **this** state in recovering response costs at a facility, the attorney
 11 general may file a petition in the circuit court of the county in
 12 which the facility is located seeking either or both of the
 13 following:

14 (a) A lien ~~upon~~**on** the facility subject to response activity
 15 that takes priority over all other liens and encumbrances that are
 16 or have been recorded on the facility.

17 (b) A lien ~~upon~~**on** real or personal property or rights to real
 18 or personal property, other than the facility, owned by the person
 19 described in subsection (1), having priority over all other liens
 20 and encumbrances except liens and encumbrances recorded ~~prior to~~
 21 **before** the date the lien under this ~~subsection~~**subdivision** is
 22 recorded. However, the following are not subject to the lien
 23 provided for in this subdivision:

24 (i) Assets of a qualified pension plan or individual retirement
 25 account under the internal revenue code **of 1986, 26 USC 1 to 9834.**

26 (ii) Assets held expressly for the purpose of financing a
 27 dependent's college education.

28 (iii) Up to \$500,000.00 in nonbusiness real or personal property
 29 or rights to nonbusiness real or personal property, except that not

1 more than \$25,000.00 of this amount may be cash or securities.

2 (3) A petition ~~submitted pursuant to~~ **filed under** subsection
3 (2) ~~shall~~ **must** set forth, with as much specificity as possible, the
4 type of lien sought, the property that would be affected, and the
5 reasons the attorney general believes the lien is necessary. ~~Upon~~
6 **On** receipt of a petition under subsection (2), the court shall
7 promptly schedule a hearing to determine whether the petition
8 should be granted. ~~Notice~~ **The court shall provide notice** of the
9 hearing ~~shall be provided~~ to the attorney general, the property
10 owner, and ~~any persons~~ **a person** holding ~~liens~~ **a lien** or perfected
11 security ~~interests~~ **interest** in the real property subject to
12 response activity. ~~A~~ **The court shall not grant a** lien ~~shall not be~~
13 ~~granted~~ under subsection (2) against the owner of the facility if
14 the owner is not liable under section 20126.

15 (4) In addition to the lien provided in subsections (1) and
16 (2), if ~~the~~ **this** state incurs costs for response activity that
17 increases the market value of real property that is the location of
18 a release or threatened release, the increase in value caused by
19 ~~the~~ state funded response activity, to the extent ~~the~~ **this** state
20 incurred unpaid costs and damages, constitutes a lien in favor of
21 ~~the~~ **this** state ~~upon~~ **on** the real property. This lien has priority
22 over all other liens or encumbrances that are or have been recorded
23 ~~upon~~ **on** the property.

24 (5) A lien provided in subsection (1), (2), or (4) is
25 perfected against real property when a notice of lien is filed by
26 the department with the register of deeds in the county in which
27 the real property is located. A lien ~~upon~~ **on** personal property
28 provided in subsection ~~(2)~~ **(2) (b)** is perfected when a notice of
29 lien is filed by the department in accordance with applicable law

1 and regulation for the perfection of a lien on that type of
 2 personal property. ~~In addition, the department shall, at~~ **At** the
 3 time of the filing of the notice of lien, **the department shall**
 4 provide a copy of the notice of lien to the owner of that property
 5 by certified mail.

6 (6) A lien under this section continues until the liability
 7 for the costs and damages is satisfied or resolved. ~~or becomes~~
 8 ~~unenforceable through the operation of the statute of limitations~~
 9 ~~provided in section 20140.~~

10 (7) ~~Upon~~ **On** satisfaction of the liability secured by the lien,
 11 the department shall file a notice of release of lien in the same
 12 manner as provided in subsection (5).

13 (8) If the department, ~~at the time or prior to~~ **before** the time
 14 of filing the notice of release of lien ~~pursuant to~~ **under**
 15 subsection (7), ~~has made~~ **makes** a determination that the person
 16 liable under section 20126 has completed all of the response
 17 ~~activity~~ **activities** at the real property ~~pursuant to~~ **under** the
 18 approved remedial action plan, the department shall execute and
 19 file with the notice of release of lien a document stating that all
 20 response activities required in the approved remedial action plan
 21 have been completed.

22 Sec. 20140. ~~(1) Except as provided in subsections (2) and (3),~~
 23 ~~the limitation period for filing actions under this part is as~~
 24 ~~follows:~~

25 ~~(a) For the recovery of response activity costs and natural~~
 26 ~~resources damages pursuant to section 20126a(1) (a), (b), or (c),~~
 27 ~~within 6 years of initiation of physical on-site construction~~
 28 ~~activities for the remedial action selected or approved by the~~
 29 ~~department at a facility, except as provided in subdivision (b).~~

~~(b) For 1 or more subsequent actions for recovery of response activity costs pursuant to section 20126, at any time during the response activity, if commenced not later than 3 years after the date of completion of all response activity at the facility.~~

~~(c) For civil fines under this part, within 3 years after discovery of the violation for which the civil fines are assessed.~~

~~(2) For recovery of natural resources damages that accrued prior to July 1, 1991, the limitation period for filing actions under this part is July 1, 1994.~~

~~(3) For recovery of response activity costs that were incurred prior to July 1, 1991, the limitation period for filing actions under this part is July 1, 1994.~~

~~(4) Subsection (3) is curative and intended to clarify the original intent of the legislature and applies retroactively. An action under this part may be filed at any time.~~