

HOUSE BILL NO. 5918

September 11, 2024, Introduced by Reps. St. Germaine, Wozniak, Jaime Greene, DeBoyer, Aragona and Martin and referred to the Committee on Natural Resources, Environment, Tourism and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 3115 (MCL 324.3115), as amended by 2004 PA 143,
and by adding sections 3112d and 3119a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 3112d. (1) In addition to any other notification**
2 **requirements under this part, a county that discharges into the**
3 **watershed of a contiguous county any waste, waste effluent,**
4 **untreated or partially treated sewage, or any other substance in**

1 violation of a volumetric limit imposed under this part or a permit
2 or order issued or rule promulgated under this part shall implement
3 a notification system to alert the contiguous county of the
4 discharge as soon as possible, but at least 24 hours before the
5 expected discharge occurs. The contiguous county alerted under this
6 subsection must grant permission for this discharge as soon as
7 possible, but not more than 24 hours after the alert is received.

8 (2) A county that fails to provide an alert under subsection
9 (1) or that discharges before permission is granted under
10 subsection (1) is subject to a civil fine of not more than
11 \$500,000.00. The attorney general may bring an action to collect
12 the civil fine. A civil fine collected under this subsection must
13 be deposited in the discharge recovery fund created in section
14 3119a.

15 Sec. 3115. (1) The department may request **that** the attorney
16 general ~~to~~ commence a civil action for appropriate relief,
17 including a permanent or temporary injunction, for a violation of
18 this part or a provision of a permit or order issued or rule
19 promulgated under this part. An action under this subsection may be
20 brought in the circuit court for ~~the county of~~ Ingham **County** or ~~for~~
21 the county in which the defendant is located, resides, or is doing
22 business. If requested by the defendant within 21 days after
23 service of process, the court shall grant a change of venue to the
24 circuit court for ~~the county of~~ Ingham **County** or ~~for~~ the county in
25 which the alleged violation occurred, is occurring, or, in the
26 event of a threat of violation, will occur. The court has
27 jurisdiction to restrain the violation and ~~to~~ require compliance.
28 In addition to any other relief granted under this subsection, the
29 court, except as otherwise provided in this subsection, shall

1 impose a civil fine of not less than \$2,500.00 and the court may
 2 award reasonable attorney fees and costs to the prevailing party.
 3 However, all of the following apply:

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

6 (b) For a failure to report a release to the department or to
 7 the primary public safety answering point under section 3111b(1),
 8 the court shall impose a civil fine of not more than \$2,500.00.

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

12 (2) ~~A~~**Except as otherwise provided under subsection (3), a**
 13 ~~person who~~**that** at the time of the violation knew or should have
 14 known that ~~he or she~~**a substance was** discharged ~~a substance~~
 15 ~~contrary to~~**in violation of the requirements under** this part ~~,~~**or**
 16 ~~contrary to~~ a permit or order issued or rule promulgated under this
 17 part, or ~~who~~**that** intentionally makes a false statement,
 18 representation, or certification in an application for or form
 19 pertaining to a permit or in a notice or report required by the
 20 terms and conditions of an issued permit, or ~~who~~**that** intentionally
 21 renders inaccurate a monitoring device or record required to be
 22 maintained by the department, is guilty of a felony. ~~and shall be~~
 23 ~~fined~~**The court may sentence the person to imprisonment for not**
 24 **more than 2 years or impose probation and shall impose a fine of**
 25 not less than \$2,500.00 or more than \$25,000.00 for each violation.
 26 The court may impose an additional fine of not more than \$25,000.00
 27 for each day during which the unlawful discharge occurred. ~~If the~~
 28 ~~conviction is for a violation committed after a first conviction of~~
 29 ~~the person under this subsection,~~**For each subsequent violation**

1 **described in this subsection**, the court shall impose a fine of not
 2 less than \$25,000.00 per day and not more than \$50,000.00 per day
 3 of violation. ~~Upon conviction, in addition to a fine, the court in~~
 4 ~~its discretion may sentence the defendant to imprisonment for not~~
 5 ~~more than 2 years or impose probation upon a person for a violation~~
 6 ~~of this part.~~ With the exception of the issuance of criminal
 7 complaints, issuance of warrants, and the holding of an
 8 arraignment, the circuit court for the county in which the
 9 violation occurred has exclusive jurisdiction. However, the person
 10 shall not be subject to the penalties of this subsection if the
 11 discharge of the effluent is in conformance with and obedient to a
 12 rule, order, or permit of the department. In addition to a fine
 13 **authorized under this subsection**, the attorney general may file a
 14 civil suit ~~in a court of competent jurisdiction~~ to recover the full
 15 value of the injuries done to the natural resources of ~~the~~**this**
 16 state and the costs of surveillance and enforcement by ~~the~~**this**
 17 state resulting from the violation.

18 **(3) If a county discharges waste, waste effluent, untreated or**
 19 **partially treated sewage, or any other substance in violation of a**
 20 **volumetric limit imposed under this part or a permit or order**
 21 **issued or rule promulgated under this part and the discharge**
 22 **directly or indirectly impacts the watershed of a contiguous**
 23 **county, the county is subject to a civil fine of \$5,000,000.00 or**
 24 **20 cents per gallon of substance discharged in excess of the**
 25 **volumetric limit, whichever is greater. The attorney general may**
 26 **bring an action to collect the civil fine. A civil fine collected**
 27 **under this subsection must be deposited in the discharge recovery**
 28 **fund created in section 3119a.**

29 **(4) ~~(3)~~ Upon** ~~On~~ a finding by the court that the actions of a

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

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

12 **(6)** ~~(5)~~ To find a defendant civilly or criminally liable for
 13 substantial endangerment under subsection ~~(3) or (4)~~ **or (5)**, the
 14 court shall determine that the defendant knowingly or recklessly
 15 acted in ~~such a manner as to cause~~ **that caused** a danger of death or
 16 serious bodily injury and that either of the following occurred:

17 (a) The defendant had an actual awareness, belief, or
 18 understanding that ~~his or her~~ **the defendant's** conduct would cause a
 19 substantial danger of death or serious bodily injury.

20 (b) The defendant acted in gross disregard of the standard of
 21 care that any reasonable person should observe in similar
 22 circumstances.

23 **(7)** ~~(6)~~ Knowledge possessed by a person other than the
 24 defendant under subsection ~~(5)~~ **(6)** may be attributable to the
 25 defendant if the defendant took affirmative steps to ~~shield himself~~
 26 ~~or herself~~ **be shielded** from the relevant information.

27 **(8)** ~~(7)~~ A civil fine or other award ordered paid ~~pursuant to~~
 28 **in accordance with** this section ~~shall~~ **must** do both of the
 29 following:

1 (a) Be payable to the state of Michigan and credited to the
2 general fund.

3 (b) Constitute a lien on any property, of any nature or kind,
4 owned by the defendant.

5 **(9)** ~~(8)~~ A lien under subsection ~~(7) (b) shall take~~ **(8) (b) takes**
6 effect and ~~have~~ **has** priority over all other liens and encumbrances
7 except those filed or recorded ~~prior to~~ **before** the date of judgment
8 only if notice of the lien is filed or recorded as required by
9 state or federal law.

10 **(10)** ~~(9)~~ A lien filed or recorded ~~pursuant to~~ **in accordance**
11 **with** subsection ~~(8) shall~~ **(9) must** be terminated ~~according to~~ **in**
12 **compliance with** the procedures required by state or federal law
13 within 14 days after the fine or other award ordered to be paid is
14 paid.

15 **(11)** ~~(10)~~ In addition to any other method of collection, ~~any a~~
16 fine or other award ordered paid may be recovered by right of
17 setoff to any debt owed to the defendant by ~~the state of Michigan,~~
18 **this state**, including the right to a refund of income taxes paid.

19 **Sec. 3119a. (1) The discharge recovery fund is created in the**
20 **state treasury.**

21 **(2) The state treasurer may receive money or other assets from**
22 **any source for deposit into the discharge recovery fund. The state**
23 **treasurer shall direct the investment of money in the discharge**
24 **recovery fund and credit to the discharge recovery fund interest**
25 **and earnings from fund investments. Money in the discharge recovery**
26 **fund at the end of the fiscal year remains in the discharge**
27 **recovery fund and does not lapse to the general fund. The**
28 **department is the administrator of the discharge recovery fund for**
29 **auditing purposes.**

1 (3) The department shall expend money from the discharge
2 recovery fund, on appropriation, to provide grants to a county
3 whose watershed is impacted by a discharge of waste, waste
4 effluent, untreated or partially treated sewage, or any other
5 substance in violation of this part or a permit or order issued or
6 rule promulgated under this part. An application for a grant under
7 this subsection must be made on a form and in a manner prescribed
8 by the department. The department shall publish criteria on which
9 the grants will be issued under this subsection and make that
10 information available on the department's website.