

# HOUSE BILL NO. 4961

June 03, 2021, Introduced by Reps. Koleszar, Weiss, Aiyash, Hood and Ellison and referred to the Committee on Regulatory Reform.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 5529, 5530, 5531, 11546, and 11549 (MCL 324.5529, 324.5530, 324.5531, 324.11546, and 324.11549), section 11546 as amended by 2006 PA 56 and section 11549 as amended by 2006 PA 58.

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

**1** Sec. 5529. (1) The department may assess an administrative  
**2** fine of ~~up to~~ **not more than** \$10,000.00, **or, if the violator is the**

1 **owner or operator of a sanitary landfill, not more than**  
2 **\$100,000.00**, for each instance of violation and, if the violation  
3 continues, for each day of continued noncompliance, if the  
4 department, on the basis of available information, finds that the  
5 person has violated or is in violation of this part or a rule  
6 promulgated **or permit or order issued** under this part.  ~~, has failed~~  
7  ~~to obtain a permit required under this part, violates an order~~  
8  ~~under this part, or has failed to comply with the terms of a permit~~  
9  ~~issued under this part.~~ If a single event constitutes an instance  
10 of violation of any combination of this part, a rule promulgated  
11 **under this part, a permit issued under this part, or an order**  
12 **issued** under this part,  ~~or a permit issued or order entered under~~  
13  ~~this part,~~ the amount of the administrative fine for that single  
14 event shall not exceed \$10,000.00, **or, if the violator is the owner**  
15 **or operator of a sanitary landfill, not more than \$100,000.00**, for  
16 that violation. The assessment of an administrative fine may be  
17 either a part of a compliance order or a separate order issued by  
18 the department.

19 (2) The authority of the department under this section is  
20 limited to matters where the total administrative fine sought does  
21 not exceed \$100,000.00, **or, if the violator is the owner or**  
22 **operator of a sanitary landfill, \$1,000,000.00**, and the  
23 **administrative action is initiated within 12 months after** the first  
24 alleged date of violation.  ~~occurred within 12 months prior to~~  
25  ~~initiation of the administrative action.~~ Except as may otherwise be  
26 provided by applicable law, the department shall not condition the  
27 issuance of a permit on the payment of an administrative fine  
28 assessed pursuant to this section.

29 (3) Within 28 days  ~~of~~ **after** being assessed an administrative

1 fine ~~from~~**by** the department, a person may file a petition with the  
2 department for review of ~~this~~**the** fine. Review of the fine shall be  
3 conducted pursuant to the contested case procedures of **chapter 4 of**  
4 the administrative procedures act of 1969, ~~Act No. 306 of the~~  
5 ~~Public Acts of 1969, being sections 24.271 to 24.287 of the~~  
6 ~~Michigan Compiled Laws.~~**1969 PA 306, MCL 24.271 to 24.288.** If  
7 issued as part of a consent order issued pursuant to section 5528,  
8 only the amount of the administrative fine and the alleged  
9 violation on which the fine is based are subject to the contested  
10 case procedures. ~~of Act No. 306 of the Public Acts of 1969.~~

11 Sec. 5530. (1) The attorney general may commence a civil  
12 action against a person for appropriate relief, including  
13 injunctive relief, and a civil fine as provided in subsection (2)  
14 for any of the following:

15 (a) Violating this part or a rule promulgated under this part.

16 (b) Failure to obtain a permit under this part.

17 (c) Failure to comply with the terms of a permit or an order  
18 issued under this part.

19 (d) Failure to pay an air quality fee or comply with a filing  
20 requirement under this part.

21 (e) Failure to comply with the inspection, entry, and  
22 monitoring requirements of this part.

23 (f) A violation described in section 5518(2).

24 (2) In addition to any other relief authorized under this  
25 section, the court may impose a civil fine of not more than  
26 \$10,000.00, ~~for each instance of violation and, if the violation~~  
27 ~~continues, for each day of continued violation.~~**or, if the defendant**  
28 **is the owner or operator of a sanitary landfill, not more than**  
29 **\$100,000.00.**

1 (3) In addition to other relief authorized under this section,  
2 the attorney general may, at the request of the department, file an  
3 action in a court of competent jurisdiction to recover the full  
4 value of the injuries done to the natural resources of ~~the~~**this**  
5 state.

6 (4) In issuing a final order in an action brought pursuant to  
7 this section, the court may award costs of litigation, including,  
8 but not limited to, reasonable attorney and expert witness fees, to  
9 the prevailing or substantially prevailing party if the court  
10 determines that such an award is appropriate.

11 (5) A civil action brought under this section may be brought  
12 in the county in which the defendant is located, resides, or is  
13 doing business ~~or~~ in the circuit court for the county of Ingham,  
14 ~~or~~ in the county in which the registered office of a defendant  
15 corporation is located, or in the county where the violation  
16 occurred.

17 (6) General defenses and affirmative defenses ~~or~~ that may  
18 otherwise apply under state law may apply in an action brought  
19 under this section as determined to be appropriate by a court of  
20 competent jurisdiction.

21 (7) Fines imposed under this section shall be assessed for  
22 each instance of violation and, if the violation is continuous,  
23 ~~shall be~~**are** assessable up to the maximum amount for each day of  
24 violation.

25 Sec. 5531. (1) A person who knowingly violates any requirement  
26 or prohibition of an applicable requirement of this part or a rule  
27 promulgated under this part or ~~who fails to obtain or comply with~~  
28 **of** a permit, ~~or comply with a final order,~~ or order of  
29 determination issued under this part is guilty of a misdemeanor

1 punishable by a fine of not more than \$10,000.00, **or, if the person**  
2 **is the owner or operator of a sanitary landfill, not more than**  
3 **\$100,000.00**, per day, for each violation.

4 (2) A person who knowingly makes a false material statement,  
5 representation, or certification in, or omits material information  
6 from, or knowingly alters, conceals, or fails to file any notice,  
7 application, record, report, plan, or other document required to be  
8 submitted pursuant to this part or a rule promulgated under this  
9 part, or who knowingly fails to notify or report information  
10 required to be submitted under this part or a rule promulgated  
11 under this part, or who knowingly falsifies, tampers with, renders  
12 inaccurate, or knowingly fails to install any monitoring device or  
13 method required under this part or a rule promulgated under this  
14 part, is guilty of a misdemeanor punishable by imprisonment for not  
15 more than 1 year and a fine of not more than \$10,000.00, **or, if the**  
16 **person is the owner or operator of a sanitary landfill, not more**  
17 **than \$100,000.00**, per day, for each violation.

18 (3) A person who knowingly fails to pay any air quality fee  
19 owed under this part is guilty of a misdemeanor punishable by a  
20 fine of not more than \$10,000.00, **or, if the person is the owner or**  
21 **operator of a sanitary landfill, not more than \$100,000.00.**

22 (4) A person who knowingly releases into the ambient air any  
23 specific chemical or any hazardous air pollutant listed in 40  
24 ~~C.F.R. part 68, section 68.130 (January 19, 1993)~~ **CFR 68.130 (March**  
25 **13, 2000)** pursuant to the authority of section 112(r) of ~~part A of~~  
26 ~~title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 42 USC 7412,~~  
27 or both, contrary to applicable federal, state, or local  
28 requirements, or contrary to a permit issued under this part, and  
29 because of the quantities or concentrations of the substance

1 released knows or should have known at the time that the release  
2 places another person in imminent danger of death or serious bodily  
3 injury is guilty of a felony punishable by imprisonment for not  
4 more than 2 years or a fine of not more than \$10,000.00, **or, if the**  
5 **person is the owner or operator of a sanitary landfill, not more**  
6 **than \$100,000.00, or both.**

7 (5) A person who knowingly releases or causes the release into  
8 the ambient air **of** any specific chemical or any hazardous air  
9 pollutant listed in 40 ~~C.F.R. part 68, section 68.130 (January 19,~~  
10 ~~1993)~~ **CFR 68.130 (March 13, 2000)** pursuant to the authority of  
11 section 112(r) ~~of part A of title I of the clean air act, 84 Stat.~~  
12 ~~1685, 42 U.S.C. 42 USC 7412, or both, contrary to applicable~~  
13 federal, state, or local requirements, or contrary to a permit  
14 issued under this part, ~~and~~ who knows or should have known at the  
15 time that the release places another person in imminent danger of  
16 death or serious bodily injury, ~~and the release results whose~~  
17 **actions do result** in death or serious bodily injury to any person,  
18 is guilty of a felony punishable by imprisonment for not more than  
19 6 years or a fine of not more than \$25,000.00, **or, if the person is**  
20 **the owner or operator of a sanitary landfill, not more than**  
21 **\$250,000.00, or both.**

22 (6) A person who knowingly releases into the ambient air any  
23 specific chemical or any hazardous air pollutant listed in 40  
24 ~~C.F.R. part 68, section 68.130 (January 19, 1993)~~ **CFR 68.130 (March**  
25 **13, 2000)** pursuant to the authority of section 112(r) ~~of part A of~~  
26 ~~title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 42 USC 7412,~~  
27 or both, contrary to applicable federal, state, or local  
28 requirements, or contrary to a permit issued under this part, ~~and~~  
29 who intended at that time to place another person in imminent

1 danger of death or serious bodily injury, and whose actions do  
2 result in death or cause serious bodily injury to any person is  
3 guilty of a felony punishable by imprisonment for not more than 15  
4 years or a fine of not more than \$250,000.00, **or, if the person is**  
5 **the owner or operator of a sanitary landfill, not more than**  
6 **\$2,500,000.00, or both.**

7 (7) In determining whether a defendant who is an individual  
8 knew that the violation placed another person in imminent danger of  
9 death or serious bodily injury as required under subsections (4),  
10 (5), and (6), the defendant is responsible only for actual  
11 awareness or actual belief possessed, and knowledge possessed by a  
12 person other than the defendant, but not by the defendant, may not  
13 be attributed to the defendant. However, in proving a defendant's  
14 possession of actual knowledge, circumstantial evidence may be  
15 used, including evidence that the defendant took affirmative steps  
16 to be shielded from relevant information.

17 (8) Fines imposed under this section shall be assessed for  
18 each instance of violation and, if the violation is continuous,  
19 ~~shall be~~**are** assessable up to the maximum amount for each day of  
20 violation.

21 (9) A defendant may establish an affirmative defense to a  
22 prosecution under this section by showing by a preponderance of the  
23 evidence that the conduct charged was freely consented to by the  
24 person endangered and that the danger and conduct charged were  
25 reasonably foreseeable hazards of any of the following:

26 (a) An occupation, a business, or a profession.

27 (b) Medical treatment or medical or scientific experimentation  
28 conducted by professionally approved methods if the person ~~had been~~  
29 **was** made aware of the risks involved prior to giving consent.

1 (10) All general defenses, affirmative defenses, and bars to  
2 prosecution that may otherwise apply with respect to state criminal  
3 offenses may apply under this section and shall be determined by  
4 the courts of this state having jurisdiction according to the  
5 principles of common law as they may be interpreted in the light of  
6 reason and experience. Concepts of justification and excuse  
7 applicable under this section may be developed by the courts in the  
8 light of reason and experience.

9 (11) Fines shall not be imposed pursuant to this section for a  
10 violation that was caused by an act of God, war, strike, riot,  
11 catastrophe, or other condition to which negligence or willful  
12 misconduct on the part of the person was not the proximate cause.

13 (12) As used in this section:

14 (a) "Serious bodily injury" means bodily injury that involves  
15 a substantial risk of death, unconsciousness, extreme physical  
16 pain, protracted and obvious disfigurement or protracted loss or  
17 impairment of the function of a bodily member, organ, or mental  
18 faculty.

19 (b) "Specific chemical" means a hazardous air pollutant listed  
20 in section 112(b) (1) ~~of Part A of title I of the clean air act, 84~~  
21 ~~Stat. 1685, 42 U.S.C. 42 USC~~ 7412, except for the following  
22 compounds:

23 (i) Antimony compounds.

24 (ii) Arsenic compounds (inorganic including arsine).

25 (iii) Beryllium compounds.

26 (iv) Cadmium compounds.

27 (v) Chromium compounds.

28 (vi) Cobalt compounds.

29 (vii) Coke oven emissions.



- 1 (viii) Cyanide compounds.
- 2 (ix) Glycol ethers.
- 3 (x) Lead compounds.
- 4 (xi) Manganese compounds.
- 5 (xii) Mercury compounds.
- 6 (xiii) Fine mineral fibers.
- 7 (xiv) Nickel compounds.
- 8 (xv) Polycyclic organic matter.
- 9 (xvi) Radionuclides (including radon).
- 10 (xvii) Selenium compounds.

11 Sec. 11546. (1) The department or a health officer may request  
12 that the attorney general bring an action in the name of the people  
13 of ~~the~~**this** state, or a municipality or county may bring an action  
14 based on facts arising within its boundaries, for any appropriate  
15 relief, including injunctive relief, for a violation of this part  
16 or rules promulgated under this part.

17 (2) In addition to any other relief provided by this section,  
18 the court may impose on any person who violates ~~any provision of~~  
19 this part or rules promulgated under this part or who fails to  
20 comply with any permit, license, or final order issued pursuant to  
21 this part a civil fine as follows:

22 (a) Except as provided in subdivision (b), a civil fine of not  
23 more than \$10,000.00, **or, if the person is the owner or operator of**  
24 **a landfill, not more than \$100,000.00**, for each day of violation.

25 (b) For a second or subsequent violation, a civil fine of not  
26 more than \$25,000.00, **or, if the person is the owner or operator of**  
27 **a landfill, not more than \$250,000.00**, for each day of violation.

28 (3) In addition to any other relief provided by this section,  
29 the court may order a person who violates this part or the rules

1 promulgated under this part to restore, or to pay to ~~the~~**this** state  
2 an amount equal to the cost of restoring, the natural resources of  
3 this state affected by the violation to their original condition  
4 before the violation, and to pay to ~~the~~**this** state the costs of  
5 surveillance and enforcement incurred by ~~the~~**this** state as a result  
6 of the violation.

7 (4) In addition to any other relief provided by this section,  
8 the court shall order a person who violates section 11526e to  
9 return, or to pay to ~~the~~**this** state an amount equal to the cost of  
10 returning, the solid waste that is the subject of the violation to  
11 the country in which that waste was generated.

12 (5) This part does not preclude any person from commencing a  
13 civil action based on facts that may also constitute a violation of  
14 this part or the rules promulgated under this part.

15 Sec. 11549. (1) A person who violates this part, a rule  
16 promulgated under this part, or a condition of a permit, license,  
17 or final order issued pursuant to this part is guilty of a  
18 misdemeanor punishable by a fine of not more than \$1,000.00, **or, if**  
19 **the person is the owner or operator of a landfill, not more than**  
20 **\$10,000.00**, for each violation and costs of prosecution and, if in  
21 default of payment of fine and costs, imprisonment for not more  
22 than 6 months.

23 (2) A person who knowingly violates section 11526e is guilty  
24 of a felony punishable by imprisonment for not more than 2 years or  
25 a fine of not more than \$5,000.00, **or, if the person is the owner**  
26 **or operator of a landfill, not more than \$50,000.00**, or both.

27 (3) Each day upon which a violation described in this section  
28 occurs is a separate offense.