

HOUSE BILL No. 6362

July 28, 2010, Introduced by Rep. Segal and referred to the Committee on New Economy and Quality of Life.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20129, 20137, and 20139 (MCL 324.20129, 324.20137, and 324.20139), as amended by 1995 PA 71.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20129. (1) If 2 or more persons acting independently are
2 liable under section 20126 and there is a reasonable basis for
3 division of harm according to the contribution of each person, each
4 person is subject to liability under this part only for the portion
5 of the total harm attributable to that person. However, a person
6 seeking to limit his or her liability on the grounds that the
7 entire harm is capable of division has the burden of proof as to
8 the divisibility of the harm and as to the apportionment of
9 liability.

1 (2) If 2 or more persons are liable under section 20126 for an
2 indivisible harm, each person is subject to liability for the
3 entire harm.

4 (3) A person may seek contribution from any other person who
5 is liable under section 20126 during or following a civil action
6 brought under this part. This subsection does not diminish the
7 right of a person to bring an action for contribution in the
8 absence of a civil action by the state under this part. In a
9 contribution action brought under this part, the court shall
10 consider all of the following factors in allocating response
11 activity costs and damages among liable persons:

12 (a) Each person's relative degree of responsibility in causing
13 the release or threat of release.

14 (b) The principles of equity pertaining to contribution.

15 (c) The degree of involvement of and care exercised by the
16 person with regard to the hazardous substance.

17 (d) The degree of cooperation by the person with federal,
18 state, or local officials to prevent, minimize, respond to, or
19 remedy the release or threat of release.

20 (e) Whether equity requires that the liability of some of the
21 persons should constitute a single share.

22 (4) If, in an action for contribution under subsection (3),
23 the court determines that all or part of a person's share of
24 liability is uncollectible from that person, then the court may
25 reallocate any uncollectible amount among the other liable persons
26 according to the factors listed in subsection (3). A person whose
27 share is determined to be uncollectible continues to be subject to

1 contribution and to any continuing liability to the state.

2 (5) A person who has resolved his or her liability to the
3 state in an administrative or judicially approved consent order is
4 not liable for claims for contribution regarding matters addressed
5 in the consent order. The consent order does not discharge any of
6 the other persons liable under section 20126 unless the terms of
7 the consent order provide for this discharge, but the potential
8 liability of the other persons is reduced by the amount of the
9 consent order.

10 (6) A person who is not liable under this part, including a
11 person who ~~is~~ **WAS** issued a written determination under **FORMER**
12 section 20129a affirming that the person meets the criteria for an
13 exemption from liability, and who is otherwise in compliance with
14 section 20107a, shall be considered to have resolved his or her
15 liability to the state in an administratively approved settlement
16 under the comprehensive environmental response, compensation, and
17 liability act, ~~of 1980, Public Law 96-510, 94 Stat. 2767~~ **42 USC**
18 **9601 TO 9675**, and shall by operation of law be granted contribution
19 protection under ~~section 113(f)(2) of title I of the comprehensive~~
20 ~~environmental response, compensation, and liability act of 1980,~~
21 ~~Public Law 96-510, 42 U.S.C. 9613~~ **USC 9613(F)(2)** and under this
22 part in the same manner that contribution protection is provided
23 pursuant to subsection (5).

24 (7) If the state obtains less than complete relief from a
25 person who has resolved his or her liability to the state in an
26 administrative or judicially approved consent order under this
27 part, the state may bring an action against any other person liable

1 under section 20126 who has not resolved his or her liability.

2 (8) A person who has resolved his or her liability to the
3 state for some or all of a response activity in an administrative
4 or judicially approved consent order may seek contribution from any
5 person who is not a party to the consent order described in
6 subsection (5).

7 (9) In an action for contribution under this section, the
8 rights of any person who has resolved his or her liability to the
9 state is subordinate to the rights of the state, if the state files
10 an action under this part.

11 Sec. 20137. (1) ~~In~~ **SUBJECT TO SUBSECTIONS (2) AND (3), IN**
12 addition to other relief authorized by law, the attorney general
13 may, on behalf of the state, commence a civil action seeking 1 or
14 more of the following:

15 (a) Temporary or permanent injunctive relief necessary to
16 protect the public health, safety, or welfare, or the environment
17 from the release or threat of release.

18 (b) Recovery of state response activity costs pursuant to
19 section 20126a.

20 (c) Damages for the full value of injury to, destruction of,
21 or loss of natural resources resulting from the release or threat
22 of release, including the reasonable costs of assessing the injury,
23 destruction, or loss resulting from the release or threat of
24 release.

25 (d) A declaratory judgment on liability for future response
26 **ACTIVITY** costs and damages.

27 (e) A civil fine of not more than \$1,000.00 for each day of

1 noncompliance without sufficient cause with a written request of
2 the department pursuant to section 20114(1)(h). A fine imposed
3 under this subdivision shall be based on the seriousness of the
4 violation and any good faith efforts of the person to comply with
5 the request of the department.

6 (f) A civil fine of not more than \$10,000.00 for each day of
7 violation of this part. ~~or a rule promulgated under this part.~~ A
8 fine imposed under this subdivision shall be based upon the
9 seriousness of the violation and any good faith efforts of the
10 person to comply with this part. ~~or a rule promulgated under this~~
11 ~~part.~~

12 (g) A civil fine of not more than \$25,000.00 for each day of
13 violation of a judicial order or an administrative order issued
14 pursuant to section 20119, including exemplary damages pursuant to
15 section 20119.

16 (h) Enforcement of an administrative order issued pursuant to
17 section 20119.

18 (i) Enforcement of information gathering and entry authority
19 pursuant to section 20117.

20 (j) Enforcement of the reporting requirements under section
21 ~~20114(1), (3), and (6) 20114.~~

22 (k) Any other relief necessary for the enforcement of this
23 part.

24 (2) AN OWNER OR OPERATOR OF A FACILITY FROM WHICH A HAZARDOUS
25 SUBSTANCE IS RELEASED THAT IS DETERMINED TO BE REPORTABLE UNDER
26 SECTION 20114(1)(B)(i), OTHER THAN A PERMITTED RELEASE, WHO FAILS TO
27 NOTIFY THE DEPARTMENT WITHIN 24 HOURS AFTER OBTAINING KNOWLEDGE OF

1 THE RELEASE OR WHO SUBMITS IN SUCH NOTIFICATION ANY INFORMATION
2 THAT THE PERSON KNOWS TO BE FALSE OR MISLEADING, IS SUBJECT TO A
3 CIVIL FINE OF NOT MORE THAN \$25,000.00 FOR EACH DAY IN WHICH THE
4 VIOLATION OCCURS OR THE FAILURE TO COMPLY CONTINUES. A FINE IMPOSED
5 UNDER THIS SUBSECTION SHALL BE BASED UPON THE SERIOUSNESS OF THE
6 VIOLATION AND ANY GOOD-FAITH EFFORTS BY THE VIOLATOR TO COMPLY WITH
7 THIS SUBSECTION.

8 (3) A PERSON WHO IS RESPONSIBLE FOR AN ACTIVITY CAUSING A
9 RELEASE IN EXCESS OF THE CONCENTRATIONS THAT SATISFY THE CRITERIA
10 ESTABLISHED PURSUANT TO SECTION 20120A(1) (A) OR (B), AS APPROPRIATE
11 FOR THE USE OF THE PROPERTY, IS SUBJECT TO A CIVIL FINE AS PROVIDED
12 IN THIS PART UNLESS A FINE OR PENALTY HAS ALREADY BEEN IMPOSED FOR
13 THE RELEASE UNDER ANOTHER PART OF THIS ACT. HOWEVER, A CIVIL FINE
14 SHALL NOT BE IMPOSED UNDER THIS SUBSECTION AGAINST A PERSON WHO
15 MADE A GOOD-FAITH EFFORT TO PREVENT THE RELEASE AND TO COMPLY WITH
16 THE PROVISIONS OF THIS PART. THIS SUBSECTION DOES NOT APPLY TO A
17 RELEASE FROM AN UNDERGROUND STORAGE TANK SYSTEM AS DEFINED IN PART
18 213.

19 (4) ~~(2)~~—If an action is brought under this part by a plaintiff
20 other than the attorney general, the plaintiff shall, at the time
21 of filing, provide a copy of the complaint to the attorney general.

22 (5) ~~(3)~~—Except as otherwise provided in this part, an action
23 brought under this part may be brought in the circuit court for the
24 county of Ingham, in the county in which the defendant resides, has
25 a place of business, or in which the registered office of a
26 defendant corporation is located, or in the county where the
27 release occurred.

1 (6) ~~(4)~~—A state court does not have jurisdiction to review
2 challenges to a response activity selected or approved by the
3 department under this part or to review an administrative order
4 issued under this part in any action except an action that is 1 of
5 the following:

6 (a) An action to recover response costs, damages, or for
7 contribution.

8 (b) An action by the state to enforce an administrative order
9 under this part or by any other person under section 20135(1)(b) to
10 enforce an administrative order or to recover a fine for violation
11 of an order.

12 (c) An action pursuant to section 20119(5) for review of a
13 decision by the department denying or limiting reimbursement.

14 (d) An action pursuant to section 20135 challenging a response
15 activity selected or approved by the department, if the action is
16 filed after the completion of the response activity.

17 (e) An action by the state pursuant to section 20126a(6) to
18 compel response activity.

19 (7) ~~(5)~~—In any judicial action under this part, judicial
20 review of any issues concerning the selection or adequacy of a
21 response activity taken, ordered, or agreed to by the state are
22 limited to the administrative record. If the court finds that the
23 record is incomplete or inadequate, the court may consider
24 supplemental material in the action. In considering objections
25 raised in a judicial action under this part, the court shall uphold
26 the state's decision in selecting a response activity unless the
27 objecting party can demonstrate based on the administrative record

1 that the decision was arbitrary and capricious or otherwise not in
2 accordance with law. In reviewing alleged procedural errors, the
3 court may disallow costs or damages only to the extent the errors
4 were so serious and related to matters of such central importance
5 that the activity would have been significantly changed had the
6 errors not been made.

7 (8) ~~(6)~~—In an action commenced under this part, any person may
8 intervene as a matter of right if that person claims an interest
9 relating to the subject matter of the action and is situated so
10 that the disposition of the action may, as a practical matter,
11 impair or impede the person's ability to protect that interest,
12 unless the court finds the person's interest is adequately
13 represented by an existing party.

14 Sec. 20139. (1) The penalties provided in this section only
15 apply to a release that occurs after July 1, 1991.

16 (2) A person who does any of the following is guilty of a
17 felony and shall be fined not less than \$2,500.00 or more than
18 \$25,000.00 for each violation:

19 (a) Knowingly releases or causes a release contrary to
20 applicable federal, state, or local requirements or contrary to any
21 permit or license held by that person, if that person knew or
22 should have known that the release could cause personal injury or
23 property damage.

24 (b) Intentionally makes a false statement, representation, or
25 certification in any application, record, report, plan, or other
26 document filed or required to be maintained under this part. ~~and~~
27 ~~rules promulgated under this part.~~

1 (c) Intentionally renders inaccurate any monitoring device or
2 record required to be maintained under this part. ~~or a rule~~
3 ~~promulgated under this part.~~

4 (d) Misrepresents his or her qualifications ~~in a document~~
5 ~~prepared pursuant to section 20129a~~ **UNDER SECTION 20114D OR 20114E.**

6 (3) In addition to a fine imposed under subsection (2), the
7 court may impose an additional fine of not more than \$25,000.00 for
8 each day during which the release occurred. If the conviction is
9 for a violation committed after a first conviction of the person
10 under this subsection, the court shall impose a fine of not less
11 than \$25,000.00 and not more than \$50,000.00 per day of violation.
12 Upon conviction, in addition to a fine, the court in its discretion
13 may sentence the defendant to imprisonment for not more than 2
14 years or impose probation upon a person for a violation of this
15 part. With the exception of the issuance of criminal complaints,
16 issuance of warrants, and the holding of an arraignment, the
17 circuit court for the county in which the violation occurred has
18 exclusive jurisdiction.

19 (4) Upon a finding by the court that the action of a criminal
20 defendant prosecuted under this section poses or posed a
21 substantial endangerment to public health, safety, or welfare, the
22 court shall impose, in addition to the penalties set forth in
23 subsections (2) and (3), a fine of not less than \$1,000,000.00 and,
24 in addition to a fine, a sentence of 5 years' imprisonment.

25 (5) To find a defendant criminally liable for substantial
26 endangerment under subsection (4), the court shall determine that
27 the defendant knowingly or recklessly acted in such a manner as to

1 cause a danger of death or serious bodily injury and that either of
2 the following has occurred:

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

6 (b) The defendant acted in gross disregard of the standard of
7 care that any reasonable person would observe in similar
8 circumstances.

9 (6) Knowledge possessed by a person other than the defendant
10 under subsection (5) may be attributable to the defendant if the
11 defendant took affirmative steps to shield himself or herself from
12 the relevant information.

13 (7) The department may pay an award of up to \$10,000.00 to an
14 individual that provides information leading to the arrest and
15 conviction of a person for a violation of this section. The
16 department shall promulgate rules that prescribe criteria for
17 granting awards under this section. An award shall not be made
18 under this section until rules are promulgated prescribing the
19 criteria for making awards. Awards under this subsection may be
20 paid from the Michigan environmental assurance fund, if enabling
21 legislation creating the fund is enacted into law.

22 (8) As used in this section, "serious bodily injury" means
23 bodily injury that involves a substantial risk of death,
24 unconsciousness, extreme physical pain, protracted and obvious
25 disfigurement, or protracted loss or impairment of the function of
26 a bodily member, organ, or mental faculty.

27 Enacting section 1. This amendatory act does not take effect

1 unless all of the following bills of the 95th Legislature are
2 enacted into law:

3 (a) Senate Bill No. 1345.

4 (b) Senate Bill No. 1346.

5 (c) House Bill No. 6360 (request no. H06270'10 *).

6 (d) House Bill No. 6363 (request no. H06271'10 *).

7 (e) Senate Bill No. _____ or House Bill No. 6359 (request no.
8 07378'10).