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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 4324

03/09/2020 Authored by Lee, Huot, Wazlawik, Hansen, Wagenius and others
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy

1.1 A bill for an act
1.2 relating to environment; modifying penalties; requiring higher financial penalties
1.3 for repeated violations; amending Minnesota Statutes 2018, sections 115.071,
1.4 subdivision 3; 116.072, subdivisions 2, 5.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2018, section 115.071, subdivision 3, is amended to read:

1.7 Subd. 3. Civil penalties. (a) Any person who violates any provision of this chapter or
1.8 chapter 114C or 116, except any provisions of chapter 116 relating to air and land pollution
1.9 caused by agricultural operations which that do not involve national pollutant discharge
1.10 elimination system permits, or of (1) any effluent standards and limitations or water quality
1.11 standards, (2) any permit or term or condition thereof, (3) any national pollutant discharge
1.12 elimination system filing requirements, (4) any duty to permit or carry out inspection, entry
1.13 or monitoring activities, or (5) any rules, stipulation agreements, variances, schedules of
1.14 compliance, or orders issued by the agency, shall forfeit forfeits and must pay to the state
1.15 a penalty, in an amount to be determined by the court, of not more than \$10,000 per day of
1.16 violation, except that if the violation relates to hazardous waste, the person shall forfeit
1.17 forfeits and must pay to the state a penalty, in an amount to be determined by the court, of
1.18 not more than \$25,000 per day of violation.

1.19 (b) A person who violates any of the provisions referenced in paragraph (a) within 36
1.20 months of one or more previous violations subject to enforcement under this section or
1.21 section 116.072 forfeits and must pay to the state a penalty, in an amount to be determined
1.22 by the court, of at least \$..... per day of violation or ... percent more than the penalty imposed
1.23 for the most recent violation, whichever is greater, except that if the violation relates to

2.1 hazardous waste, the person forfeits and must pay to the state a penalty, in an amount to be
 2.2 determined by the court, of at least \$..... per day of violation or ... percent more than the
 2.3 penalty imposed for the most recent violation, whichever is greater. A penalty imposed
 2.4 under this paragraph must not exceed \$10,000 per day of violation, except that if the violation
 2.5 relates to hazardous waste, the penalty must not exceed \$25,000 per day of violation.

2.6 (c) In addition, in the discretion of the court, the defendant may be required to:

2.7 (a) (1) forfeit and pay to the state a sum which will adequately compensate the state for
 2.8 the reasonable value of cleanup and other expenses directly resulting from unauthorized
 2.9 discharge of pollutants, whether or not accidental; and

2.10 (b) (2) forfeit and pay to the state an additional sum to constitute just compensation for
 2.11 any loss or destruction to wildlife, fish or other aquatic life and for other actual damages to
 2.12 the state caused by an unauthorized discharge of pollutants.

2.13 (d) As a defense to any of said damages, the defendant may prove that the violation was
 2.14 caused solely by (1) an act of God, (2) an act of war, (3) negligence on the part of the state
 2.15 of Minnesota, or (4) an act or failure to act which constitutes sabotage or vandalism, or any
 2.16 combination of the foregoing clauses.

2.17 (e) The civil penalties and damages provided for in this subdivision may be recovered
 2.18 by a civil action brought by the attorney general in the name of the state.

2.19 Sec. 2. Minnesota Statutes 2018, section 116.072, subdivision 2, is amended to read:

2.20 Subd. 2. **Amount of penalty; considerations.** (a) The commissioner or county board
 2.21 may issue orders assessing penalties up to \$20,000 for violations identified during an
 2.22 inspection or other compliance review.

2.23 (b) In determining the amount of a penalty, the commissioner or county board ~~may~~ must
 2.24 consider:

2.25 (1) the willfulness of the violation;

2.26 (2) the gravity of the violation, including damage to humans, animals, air, water, land,
 2.27 or other natural resources of the state;

2.28 (3) the history of past violations;

2.29 (4) the number of violations;

2.30 (5) the economic benefit gained by the person by allowing or committing the violation;
 2.31 and

3.1 (6) other factors as justice may require, if the commissioner or county board specifically
3.2 identifies the additional factors in the commissioner's or county board's order.

3.3 (c) For a violation after an initial violation, the commissioner or county board ~~shall~~ must,
3.4 in determining the amount of a penalty, consider the factors in paragraph (b) and the:

3.5 (1) similarity of the most recent previous violation and the violation to be penalized;

3.6 (2) time elapsed since the last violation;

3.7 (3) number of previous violations; and

3.8 (4) response of the person to the most recent previous violation identified.

3.9 **EFFECTIVE DATE.** This section is effective the day following final enactment and
3.10 applies to an order assessing a penalty issued on or after that date.

3.11 Sec. 3. Minnesota Statutes 2018, section 116.072, subdivision 5, is amended to read:

3.12 Subd. 5. **Penalty.** (a) Except as provided in paragraph (b), if the commissioner or county
3.13 board determines that the violation has been corrected or appropriate steps have been taken
3.14 to correct the action, the penalty must be forgiven. Unless the person requests review of the
3.15 order under subdivision 6 or 7 before the penalty is due, the penalty in the order is due and
3.16 payable:

3.17 (1) on the 31st day after the order was received, if the person subject to the order fails
3.18 to provide information to the commissioner or county board showing that the violation has
3.19 been corrected or that appropriate steps have been taken toward correcting the violation; or

3.20 (2) on the 20th day after the person receives the commissioner's or county board's
3.21 determination under subdivision 4, paragraph (b), if the person subject to the order has
3.22 provided information to the commissioner or county board that the commissioner or county
3.23 board determines is not sufficient to show the violation has been corrected or that appropriate
3.24 steps have been taken toward correcting the violation.

3.25 (b) For a repeated or serious violation, the commissioner or county board ~~may~~ must
3.26 issue an order with a penalty that will not be forgiven after the corrective action is taken.
3.27 A penalty for a repeated violation that occurs within 36 months of one or more previous
3.28 violations must be at least ... percent more than the penalty imposed for the most recent
3.29 violation, except the amount must not exceed the maximum penalty established in subdivision
3.30 2. The penalty is due by 31 days after the order was received unless review of the order
3.31 under subdivision 6, 7, or 8 has been sought.

4.1 (c) Interest at the rate established in section 549.09 begins to accrue on penalties under
4.2 this subdivision on the 31st day after the order with the penalty was received.

4.3 **EFFECTIVE DATE.** This section is effective the day following final enactment and
4.4 applies to an order assessing a penalty issued on or after that date.