

Chapter 535

(House Bill 1101)

AN ACT concerning

**Standing – Environmental and Natural Resources Protection Proceedings
(Clean Water Justice Act of 2024)**

FOR the purpose of providing certain persons ~~and associations~~ standing in certain environmental and natural resources protection proceedings, ~~including proceedings arising under provisions of law relating to water quality and water resources protection, subject to certain conditions~~; authorizing certain persons that meet certain standing requirements to bring certain civil actions under certain circumstances; requiring a plaintiff, under certain circumstances, to give certain notice and provide certain documentation to the Department of the Environment and the Attorney General in a certain manner and to file a certain affidavit; authorizing a court to grant certain relief, award certain costs of litigation, and impose certain civil penalties in certain civil actions under certain circumstances; authorizing certain persons that meet certain standing requirements to intervene in certain proceedings under certain circumstances; and generally relating to standing in certain environmental and natural resources protection proceedings.

BY adding to

Article – Environment

Section 1–901 through ~~1–905~~ 1–904 to be under the new subtitle “Subtitle 9. Clean Water Justice Act”

Annotated Code of Maryland

(2013 Replacement Volume and 2023 Supplement)

BY repealingArticle – EnvironmentSection 9–344.1Annotated Code of Maryland(2014 Replacement Volume and 2023 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Environment**SUBTITLE 9. CLEAN WATER JUSTICE ACT.****1–901.**

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

~~(B) “ASSOCIATION” MEANS AN ASSOCIATION, A CORPORATION, OR ANY OTHER ORGANIZATION THAT CONSISTS OF TWO OR MORE MEMBERS JOINED BY MUTUAL CONSENT FOR A COMMON PURPOSE.~~

~~(C) (B) “COSTS OF LITIGATION” INCLUDES REASONABLE ATTORNEY’S FEES, COURT COSTS, AND EXPERT WITNESS FEES, AND DOCUMENTED COSTS INCURRED IN INVESTIGATING ALLEGED VIOLATIONS.~~

~~(D) (1) “INJURY IN FACT” MEANS AN INVASION OF A LEGALLY PROTECTED INTEREST THAT IS:~~

~~(I) CONCRETE AND PARTICULARIZED;~~

~~(II) ACTUAL OR IMMINENT; AND~~

~~(III) NOT CONJECTURAL OR HYPOTHETICAL.~~

~~(2) “INJURY IN FACT” INCLUDES:~~

~~(I) A PROPERTY RIGHT OR PERSONAL INTEREST THAT IS DISTINCT FROM, OR SPECIFICALLY AFFECTED IN A WAY THAT IS DISTINCT FROM, A PROPERTY RIGHT OR PERSONAL INTEREST OF THE GENERAL PUBLIC; AND~~

~~(II) A NEGATIVE IMPACT, OR THE THREAT OF A NEGATIVE IMPACT, TO A PERSON’S HEALTH OR TO THE USE AND ENJOYMENT OF A NATURAL RESOURCE OR ENVIRONMENT, INCLUDING A NEGATIVE IMPACT TO AESTHETIC, RECREATIONAL, CONSERVATIONAL, AND ECONOMIC INTERESTS THAT MAY BE SHARED AMONG COMMUNITY MEMBERS.~~

(C) “EPHEMERAL STREAM” MEANS A BODY OF WATER WITH:

(1) A STREAM BED LOCATED ABOVE THE WATER TABLE YEAR-ROUND;

(2) A STREAM FLOW PRIMARILY SOURCED FROM RAINFALL RUNOFF;

AND

(3) FLOWING WATER ONLY DURING, AND FOR A SHORT DURATION AFTER, PRECIPITATION EVENTS IN A TYPICAL YEAR.

(D) “INTERMITTENT STREAM” MEANS A BODY OF WATER WITH:

(1) FLOWING WATER DURING CERTAIN TIMES OF THE YEAR, WHEN GROUNDWATER PROVIDES WATER FOR STREAM FLOW; AND

(2) A STREAM FLOW SUPPLEMENTED BY RUNOFF FROM RAINFALL.

(E) “PERSON” MEANS AN INDIVIDUAL, RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY, OR REPRESENTATIVE OF ANY KIND AND ANY PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER NONGOVERNMENTAL ENTITY.

(F) “POLITICAL SUBDIVISION” MEANS:

- (1) A COUNTY;
- (2) THE CITY OF BALTIMORE;
- (3) A MULTICOUNTY AGENCY;
- (4) A MUNICIPAL CORPORATION;
- (5) A SINGLE-PURPOSE DISTRICT; OR
- (6) A SOIL CONSERVATION OR SANITARY DISTRICT.

~~(F) “SECRETARY” MEANS THE SECRETARY OF ANY STATE AGENCY, APPOINTED BY THE GOVERNOR.~~

~~(G) (F) (G) “STANDARD” MEANS ANY REQUIREMENT, PROHIBITION, LIMITATION, OR CONDITION ESTABLISHED BY STATUTE, REGULATION, PERMIT, ORDER, OR LICENSE ISSUED BY A SECRETARY THE SECRETARY OR ANY OTHER OFFICE OR AGENCY OF THE STATE, A LOCAL GOVERNMENT, OR A POLITICAL SUBDIVISION IN ACCORDANCE WITH:~~

(1) ~~TITLE 4,~~ TITLE 5, SUBTITLE 9 OF THIS ARTICLE, IF THE REQUIREMENT, PROHIBITION, LIMITATION, OR CONDITION IS RELATED TO NONTIDAL WETLANDS THAT DO NOT HAVE A CONTINUOUS SURFACE CONNECTION TO SURFACE WATER; OR

(2) TITLE 9, SUBTITLE 3 ~~OR TITLE 16~~ OF THIS ARTICLE, IF THE REQUIREMENT, PROHIBITION, LIMITATION, OR CONDITION IS ~~HYDROLOGICALLY CONNECTED~~ RELATED TO:

(I) AN EPHEMERAL STREAM; OR

(II) AN INTERMITTENT STREAM.

1-902.

~~(A) (1) SUBJECT TO PARAGRAPH (2) OF~~ EXCEPT AS PROVIDED IN THIS SUBSECTION SUBTITLE, A PERSON THAT MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER FEDERAL LAW HAS STANDING IN CIVIL CLAIMS ARISING UNDER ANY STANDARD ~~TITLE 4, TITLE 5, TITLE 9, OR TITLE 16 OF THIS ARTICLE OR TITLE 1, SUBTITLE 3, TITLE 5, SUBTITLE 16, OR TITLE 8, SUBTITLE 18 OF THE NATURAL RESOURCES ARTICLE IF THE PERSON SUFFERS AN INJURY IN FACT THAT:~~

~~(I) IS FAIRLY TRACEABLE TO THE CHALLENGED ACTION OR CONDUCT OF THE DEFENDANT; AND~~

~~(II) IS LIKELY TO BE REDRESSED BY THE REQUESTED RELIEF OR A FAVORABLE JUDICIAL DECISION.~~

~~(2) AN INTEREST OR INJURY ASSERTED UNDER THIS SECTION SHALL FALL WITHIN THE ZONE OF INTERESTS SOUGHT TO BE PROTECTED BY TITLE 4, TITLE 5, TITLE 9, OR TITLE 16 OF THIS ARTICLE AND TITLE 1, SUBTITLE 3, TITLE 5, SUBTITLE 16, OR TITLE 8, SUBTITLE 18 OF THE NATURAL RESOURCES ARTICLE.~~

~~(B) IN ADDITION TO SUBSECTION (A) OF THIS SECTION, AN ASSOCIATION HAS STANDING IN CLAIMS ARISING UNDER TITLE 4, TITLE 5, TITLE 9, OR TITLE 16 OF THIS ARTICLE OR TITLE 1, SUBTITLE 3, TITLE 5, SUBTITLE 16, OR TITLE 8, SUBTITLE 18 OF THE NATURAL RESOURCES ARTICLE IF:~~

~~(1) ONE OR MORE MEMBERS OF THE ASSOCIATION HAVE STANDING UNDER SUBSECTION (A) OF THIS SECTION;~~

~~(2) THE INTERESTS THAT THE ASSOCIATION SEEKS TO PROTECT ARE GERMANE TO ITS PURPOSES; AND~~

~~(3) NEITHER THE CLAIM ASSERTED NOR THE RELIEF REQUESTED REQUIRES THE PARTICIPATION OF THE MEMBER.~~

1-903.

(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A PERSON THAT HAS STANDING UNDER § 1-902 OF THIS SUBTITLE MAY BRING A CIVIL ACTION ON THE PERSON'S OWN BEHALF AGAINST ANY PERSON OR POLITICAL SUBDIVISION ~~OR GOVERNMENTAL ENTITY~~ THAT IS ALLEGED TO ~~HAVE VIOLATED OR TO BE IN~~ VIOLATION OF ANY STANDARD.

(B) (1) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AN ACTION MAY NOT BE BROUGHT UNDER SUBSECTION (A) OF THIS SECTION ~~AT LEAST 60 DAYS AFTER THE PLAINTIFF HAS GIVEN~~ UNLESS THE PLAINTIFF HAS FIRST BEEN GIVEN GIVES 60 DAYS NOTICE OF THE ALLEGED VIOLATION.

(2) NOTICE UNDER THIS SUBSECTION SHALL BE:

- (I) 1. BY CERTIFIED MAIL; OR
- 2. PERSONAL SERVICE; AND

(II) PROVIDED TO:

- 1. ~~THE APPROPRIATE SECRETARY~~ SECRETARY;
- 2. THE ATTORNEY GENERAL;
- 3. ANY LOCAL JURISDICTION IN WHICH THE ~~ALLEGED VIOLATION HAS OCCURRED~~ IS ALLEGED TO OCCUR; AND
- 4. AN ALLEGED VIOLATOR OF THE STANDARD.

(3) (I) AN ACTION MAY NOT BE BROUGHT UNDER SUBSECTION (A) OF THIS SECTION IF THE ~~SECRETARY~~ SECRETARY HAS COMMENCED AND IS DILIGENTLY PROSECUTING A CIVIL ~~OR CRIMINAL ACTION IN A COURT OF THE STATE~~ OR A CONSENT ORDER IS ENTERED TO REQUIRE COMPLIANCE FROM THE ALLEGED VIOLATOR WITHOUT UNDUE DELAY OR UNREASONABLE SCHEDULES FOR RETURNING TO COMPLIANCE.

(II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, A PERSON THAT ~~HAS STANDING UNDER § 1-902 OF THIS SUBTITLE~~ MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER FEDERAL LAW MAY INTERVENE IN THE A CIVIL ACTION BROUGHT BY THE SECRETARY SECRETARY UNDER:

- ~~1. TITLE 5, SUBTITLE 9 OF THIS ARTICLE; OR~~
- ~~2. TITLE 9, SUBTITLE 3 OF THIS ARTICLE, AS PROVIDED IN § 1-904 OF THIS SUBTITLE.~~

(4) NOTICE UNDER THIS SUBSECTION SHALL IDENTIFY:

- (I) A STANDARD VIOLATED;

- (II) AN ACTIVITY CONSTITUTING THE VIOLATION;
- (III) A PERSON SUSPECTED OF BEING RESPONSIBLE FOR THE VIOLATION;
- (IV) THE LOCATION OF THE VIOLATION;
- (V) THE DATES OF VIOLATIONS IF KNOWN; AND
- (VI) THE NAME AND ADDRESS OF THE PERSON GIVING NOTICE.

(C) AN ACTION BROUGHT IN ACCORDANCE WITH THIS SECTION SHALL BE BROUGHT IN ANY CIRCUIT COURT OF A COUNTY WHERE THE ~~ALLEGED~~ CONDITION, ACTIVITY, OR FAILURE ~~IS OCCURRING, HAS OCCURRED, OR IS LIKELY TO OCCUR~~ IS ALLEGED TO BE A VIOLATION OF A STANDARD.

(D) BEFORE THE ENTERING OF ANY CONSENT JUDGMENT TO WHICH THE DEPARTMENT IS NOT A PARTY OR BEFORE THE DISMISSAL OF ANY CASE FILED IN ACCORDANCE WITH THIS SUBTITLE SUBJECT TO A SETTLEMENT AGREEMENT, THE PLAINTIFF SHALL:

(1) GIVE NOTICE AND PROVIDE A COMPLETE AND UNREDACTED COPY OF THE PROPOSED CONSENT JUDGMENT OR SETTLEMENT AGREEMENT TO THE DEPARTMENT AND THE ATTORNEY GENERAL BY PERSONAL SERVICE OR CERTIFIED MAIL AT LEAST 45 DAYS BEFORE THE DATE THAT THE PROPOSED CONSENT JUDGMENT OR SETTLEMENT AGREEMENT IS FILED WITH THE COURT; AND

(2) FILE AN AFFIDAVIT WITH THE COURT UNDER PENALTY OF PERJURY INDICATING COMPLIANCE WITH THE REQUIREMENT UNDER ITEM (1) OF THIS SUBSECTION.

(E) A COURT MAY:

(1) ORDER THE ENFORCEMENT OF A STANDARD ~~CHALLENGED UNDER THIS SECTION;~~ AND

(2) GRANT:

(I) TEMPORARY OR PERMANENT EQUITABLE RELIEF; OR

(II) ~~ANY~~ EXCEPT AS OTHERWISE PROVIDED BY THIS SUBTITLE, ANY OTHER RELIEF PROVIDED UNDER A ~~STATUTE CHALLENGED UNDER THIS SECTION~~ STANDARD; AND

~~(3) IMPOSE CONDITIONS ON A DEFENDANT TO REQUIRE THE PROTECTION OF LAND, AIR, WATER, AND OTHER NATURAL RESOURCES OR PUBLIC HEALTH FROM POLLUTION, IMPAIRMENT, OR DESTRUCTION.~~

~~(E)~~ ~~(1)~~ (F) IN AN ACTION UNDER THIS SECTION, THE COURT MAY AWARD THE COSTS OF LITIGATION TO:

~~(H)~~ (1) A PREVAILING PLAINTIFF; OR

~~(H)~~ (2) A SUBSTANTIALLY PREVAILING PLAINTIFF; OR

(3) A SUBSTANTIALLY PREVAILING DEFENDANT IF THE PLAINTIFF'S CLAIM WAS FRIVOLOUS, UNREASONABLE, OR GROUNDLESS. IF THE PLAINTIFF HAS:

1. PARTICIPATED IN AN ACTION TO ENFORCE A VIOLATION FOLLOWING THE ISSUANCE OF NOTICE UNDER SUBSECTION (B) OF THIS SECTION; AND

2. A. SUCCESSFULLY ESTABLISHED THE LIABILITY OF A DEFENDANT IN FEWER THAN ALL OF THE ASSERTED CLAIMS; OR

B. OTHERWISE ADVANCED THE PURPOSE OF THE RELEVANT STATUTES THROUGH THE OUTCOME OF THE ACTION BY IMPROVING ENVIRONMENTAL QUALITY, PROTECTING PUBLIC HEALTH, OR REDUCING POLLUTION.

~~(2) IF A PARTY TO AN ACTION UNDER THIS SECTION ACTS IN BAD FAITH OR WITHOUT SUBSTANTIAL JUSTIFICATION IN MAINTAINING OR DEFENDING THE ACTION, THE COURT MAY AWARD TO THE ADVERSE PARTY THE COSTS OF LITIGATION.~~

~~(F)~~ (G) (1) (I) A EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A COURT MAY IMPOSE A CIVIL PENALTY AUTHORIZED IN ACCORDANCE WITH THE STATUTE UNDER WHICH AN ACTION IS BROUGHT UNDER THIS SECTION.

(II) ~~INSTEAD OF IMPOSING A CIVIL PENALTY UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, A~~ A COURT MAY ORDER APPROVE A CONSENT JUDGMENT OR SETTLEMENT AGREEMENT BETWEEN THE PARTIES THAT INCLUDES A SUPPLEMENTAL ENVIRONMENTAL PROJECT.

(2) ~~SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A~~ A CIVIL PENALTY COLLECTED UNDER THIS SUBSECTION SHALL BE DEPOSITED IN A MANNER SPECIFIED BY THE STATUTE.

~~(3) IF THE ENFORCEMENT OF A STATUTORY DUTY HAS BEEN DELEGATED TO A LOCAL GOVERNMENT, UP TO 50% OF A CIVIL PENALTY COLLECTED UNDER THIS SUBSECTION MAY BE AWARDED TO THE LOCAL GOVERNMENT. THE STATE MAY NOT BE HELD LIABLE FOR CIVIL PENALTIES IN ANY ACTION UNDER THIS SUBTITLE.~~

~~1-904.~~

~~(A) (1) THIS SECTION DOES NOT APPLY TO § 1-903(B)(3) OF THIS SUBTITLE.~~

~~(B) A SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PERSON THAT HAS STANDING UNDER § 1-902 OF THIS SUBTITLE MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER FEDERAL LAW MAY HAS THE UNCONDITIONAL RIGHT AND THE AUTHORITY TO INTERVENE AS A MATTER OF RIGHT IN AN A CIVIL ACTION ARISING UNDER TITLE 4, TITLE 5, TITLE 9, OR TITLE 16 OF THIS ARTICLE OR TITLE 1, SUBTITLE 3, TITLE 5, SUBTITLE 16, OR TITLE 8, SUBTITLE 18 OF THE NATURAL RESOURCES ARTICLE, UNLESS A DEFENDANT DEMONSTRATES THAT THE PERSON'S INTEREST IS ADEQUATELY REPRESENTED BY EXISTING PARTIES ANY STANDARD BROUGHT BY THE SECRETARY UNDER:~~

~~(I) TITLE 5, SUBTITLE 9 OF THIS ARTICLE; OR~~

~~(II) TITLE 9, SUBTITLE 3 OF THIS ARTICLE.~~

~~(2) A PERSON SHALL EXERCISE THE RIGHT TO INTERVENE UNDER PARAGRAPH (1) OF THIS SUBSECTION IN ACCORDANCE WITH THE APPLICABLE PRACTICES, PROCEDURES, AND LAWS IN THE STATE.~~

~~(3) A PERSON THAT HAS STANDING TO INTERVENE UNDER § 1-902 OF THIS SUBTITLE PARAGRAPH (1) OF THIS SUBSECTION HAS THE SAME RIGHTS AS AN INTERESTED PERSON OR AGGRIEVED PARTY UNDER THE FEDERAL CLEAN WATER ACT.~~

~~(C) (B) THE STATE MAY INTERVENE AS A MATTER OF RIGHT AT ANY TIME IN A ANY PROCEEDING BROUGHT UNDER THIS SUBTITLE.~~

~~(D) NOTWITHSTANDING § 1-903(B)(3) OF THIS SUBTITLE AND SUBSECTION (A) OF THIS SECTION, A COURT MAY GRANT INTERVENTION ON MOTION BY ANY PARTY.~~

~~1-905.~~

~~THE PROVISIONS OF THIS SUBTITLE SUPERSEDE ANY INCONSISTENT PROVISION OF ANY STATE, COUNTY, OR MUNICIPAL LAW, ORDINANCE, OR REGULATION AND ANY JUDICIAL INTERPRETATION TO THE EXTENT OF THE INCONSISTENCY.~~

[9-344.1.

(a) Subject to subsection (b) of this section, a person who meets the threshold standing requirements under the federal Clean Water Act has an unconditional right and the authority to intervene in a civil action that the State initiates in State court to require compliance with:

(1) This subtitle;

(2) Regulations adopted by the Department in accordance with this subtitle; or

(3) Any discharge permit, effluent limitation, or order issued by the Department in accordance with this subtitle.

(b) A person shall exercise the right to intervene under subsection (a) of this section in accordance with the applicable practices, procedures, and laws in the State.

(c) A person who meets the requirements to intervene under subsection (a) of this section has the same rights as an interested person or aggrieved party under the federal Clean Water Act, including the right to apply for judicial appeal.]

SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 3. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that this Act:

(1) provide certain remedies to abate the pollution, destruction, or substantial or unreasonable impairment to the public health, water quality, or any other natural resource of the State;

(2) may not abridge or alter any right of action or remedies that exist under law; and

(3) may not be construed as stopping or limiting the State or any person in the exercise of the right to:

- (i) protect the natural resources of the State;
- (ii) suppress nuisances; or
- (iii) abate pollution.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.

Approved by the Governor, May 9, 2024.