

SENATE BILL No. 1306

May 9, 2002, Introduced by Senators MC COTTER, MILLER, HART, GOSCHKA, NORTH, BENNETT, DE BEAUSSAERT, BULLARD, SANBORN, PETERS and BYRUM and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 3115 (MCL 324.3115).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3115. (1) The department may request the attorney gen-
2 eral to commence a civil action for appropriate relief, including
3 a permanent or temporary injunction, for a violation of this part
4 or a provision of a permit, order, rule, or stipulation of the
5 department. An action under this subsection may be brought in
6 the circuit court for the county of Ingham or for the county in
7 which the defendant is located, resides, or is doing business.
8 The court has jurisdiction to restrain the violation and to
9 require compliance. In addition to any other relief granted
10 under this subsection, the court shall impose a civil fine of not
11 less than ~~-\$2,500.00~~ \$5,000.00 and may award reasonable attorney

SENATE BILL No. 1306

1 fees and costs to the prevailing party. However, the maximum
2 fine imposed by the court shall be not more than ~~-\$25,000.00-~~
3 \$50,000.00 per day of violation.

4 (2) A person who at the time of the violation knew or should
5 have known that he or she discharged a substance contrary to this
6 part, or contrary to a permit, order, rule, or stipulation of the
7 department, or who intentionally makes a false statement, repre-
8 sentation, or certification in an application for or ON A form
9 pertaining to a permit or in a notice or report required by the
10 terms and conditions of an issued permit, or who intentionally
11 renders inaccurate a monitoring device or record required to be
12 maintained by the department, is guilty of a felony and shall be
13 fined not less than ~~-\$2,500.00-~~ \$5,000.00 or more than
14 ~~-\$25,000.00-~~ \$50,000.00 for each violation. The court may impose
15 an additional fine of not more than ~~-\$25,000.00-~~ \$50,000.00 for
16 each day during which the unlawful discharge occurred. If the
17 conviction is for a violation committed after a first conviction
18 of the person under this subsection, the court shall impose a
19 fine of not less than ~~-\$25,000.00-~~ \$50,000.00 per day and not
20 more than ~~-\$50,000.00-~~ \$100,000.00 per day of violation. Upon
21 conviction, in addition to a fine, the court in its discretion
22 may sentence the defendant to imprisonment for not more than ~~2-~~
23 4 years or impose probation upon a person for a violation of this
24 part. With the exception of the issuance of criminal complaints,
25 issuance of warrants, and the holding of an arraignment, the cir-
26 cuit court for the county in which the violation occurred has
27 exclusive jurisdiction. However, ~~the~~ A person ~~shall~~ IS not

1 ~~be~~ subject to the penalties of this subsection if the discharge
2 of the effluent is in conformance with and obedient to a rule,
3 order, or permit of the department. In addition to a fine, the
4 attorney general may file a civil suit in a court of competent
5 jurisdiction to recover the full value of the injuries done to
6 the natural resources of the state and the costs of surveillance
7 and enforcement by the state resulting from the violation.

8 (3) Upon a finding by the court that the actions of a civil
9 defendant pose or posed a substantial endangerment to the public
10 health, safety, or welfare, the court shall impose, in addition
11 to the ~~penalties~~ SANCTIONS set forth in subsection (1), a CIVIL
12 fine of not less than ~~-\$500,000.00~~ \$1,000,000.00 and not more
13 than ~~-\$5,000,000.00~~ \$10,000,000.00.

14 (4) Upon a finding by the court that the actions of a crimi-
15 nal defendant pose or posed a substantial endangerment to the
16 public health, safety, or welfare, the court shall impose, in
17 addition to the penalties set forth in subsection (2), a fine of
18 not less than ~~-\$1,000,000.00~~ \$2,000,000.00 and, in addition to a
19 fine, a sentence of ~~5~~ 10 years' imprisonment.

20 (5) To find a defendant civilly or criminally liable for
21 substantial endangerment under subsections (3) and (4), the court
22 shall determine that the defendant knowingly or recklessly acted
23 in such a manner as to cause a danger of death or serious bodily
24 injury and that either of the following occurred:

25 (a) The defendant had an actual awareness, belief, or under-
26 standing that his or her conduct would cause a substantial danger
27 of death or serious bodily injury.

1 (b) The defendant acted in gross disregard of the standard
2 of care that any reasonable person should observe in similar
3 circumstances.

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

8 (7) Any fine or other award ordered paid pursuant to this
9 section shall do ~~both~~ ALL of the following:

10 (a) Be payable to the state of Michigan. ~~and~~

11 (B) BE credited to the general fund IF THE FINE OR AWARD WAS
12 RECOVERED IN A CIVIL ACTION.

13 (C) ~~(b)~~ Constitute a lien on any property, of any nature
14 or kind, owned by the defendant.

15 (8) A lien under subsection ~~(7)(b)~~ (7)(C) shall take
16 effect and have priority over all other liens and encumbrances
17 except those filed or recorded prior to the date of judgment only
18 if notice of the lien is filed or recorded as required by state
19 or federal law.

20 (9) A lien filed or recorded pursuant to subsection (8)
21 shall be terminated according to the procedures required by state
22 or federal law within 14 days after the fine or other award
23 ordered to be paid is paid.

24 (10) In addition to any other method of collection, any fine
25 or other award ordered paid may be recovered by right of setoff
26 to any debt owed to the defendant by the state of Michigan,
27 including the right to a refund of income taxes paid.