

HOUSE BILL No. 4107

February 1, 2005, Introduced by Reps. Gaffney, Hune, Ward, Gillard, Palsrok, Elsenheimer, Kathleen Law, Tobocman, Bieda, Plakas, Condino, Hood, Vagnozzi, Wojno, Accavitti and Acciavatti and referred to the Committee on Natural Resources, Great Lakes, Land Use, and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 3115 (MCL 324.3115), as amended by 2004 PA 143.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3115. (1) The department may request the attorney general
2 to commence a civil action for appropriate relief, including a
3 permanent or temporary injunction, for a violation of this part or
4 a provision of a permit or order issued or rule promulgated under
5 this part. An action under this subsection may be brought in the
6 circuit court for the county of Ingham or for the county in which
7 the defendant is located, resides, or is doing business. If
8 requested by the defendant within 21 days after service of process,

1 the court shall grant a change of venue to the circuit court for
2 the county of Ingham or for the county in which the alleged
3 violation occurred, is occurring, or, in the event of a threat of
4 violation, will occur. The court has jurisdiction to restrain the
5 violation and to require compliance. In addition to any other
6 relief granted under this subsection, the court, except as
7 otherwise provided in this subsection, shall impose a civil fine of
8 not less than ~~-\$2,500.00-~~ **\$5,000.00** and the court may award
9 reasonable attorney fees and costs to the prevailing party.

10 However, all of the following apply:

11 (a) The maximum fine imposed by the court shall be not more
12 than ~~-\$25,000.00-~~ **\$50,000.00** per day of violation.

13 (b) For a failure to report a release to the department or to
14 the primary public safety answering point under section 3111b(1),
15 the court shall impose a civil fine of not more than \$2,500.00.

16 (c) For a failure to report a release to the local health
17 department under section 3111b(2), the court shall impose a civil
18 fine of not more than \$500.00.

19 (2) A person who at the time of the violation knew or should
20 have known that he or she discharged a substance contrary to this
21 part, or contrary to a permit or order issued or rule promulgated
22 under this part, or who intentionally makes a false statement,
23 representation, or certification in an application for or form
24 pertaining to a permit or in a notice or report required by the
25 terms and conditions of an issued permit, or who intentionally
26 renders inaccurate a monitoring device or record required to be
27 maintained by the department, is guilty of a felony and shall be

1 fined not less than ~~-\$2,500.00~~ **\$5,000.00** or more than ~~-\$25,000.00~~
2 **\$50,000.00** for each violation. The court may impose an additional
3 fine of not more than ~~-\$25,000.00~~ **\$50,000.00** for each day during
4 which the unlawful discharge occurred. If the conviction is for a
5 violation committed after a first conviction of the person under
6 this subsection, the court shall impose a fine of not less than
7 ~~\$25,000.00~~ **\$50,000.00** per day and not more than ~~-\$50,000.00~~
8 **\$100,000.00** per day of violation. Upon conviction, in addition to a
9 fine, the court in its discretion may sentence the defendant to
10 imprisonment for not more than 2 years or impose probation upon a
11 person for a violation of this part. With the exception of the
12 issuance of criminal complaints, issuance of warrants, and the
13 holding of an arraignment, the circuit court for the county in
14 which the violation occurred has exclusive jurisdiction. However,
15 the person shall not be subject to the penalties of this subsection
16 if the discharge of the effluent is in conformance with and
17 obedient to a rule, order, or permit of the department. In addition
18 to a fine, the attorney general may file a civil suit in a court of
19 competent jurisdiction to recover the full value of the injuries
20 done to the natural resources of the state and the costs of
21 surveillance and enforcement by the state resulting from the
22 violation.

23 (3) Upon a finding by the court that the actions of a civil
24 defendant pose or posed a substantial endangerment to the public
25 health, safety, or welfare, the court shall impose, in addition to
26 the sanctions set forth in subsection (1), a fine of not less than
27 ~~\$500,000.00~~ **\$1,000,000.00** and not more than ~~-\$5,000,000.00~~

1 \$10,000,000.00.

2 (4) Upon a finding by the court that the actions of a criminal
3 defendant pose or posed a substantial endangerment to the public
4 health, safety, or welfare, the court shall impose, in addition to
5 the penalties set forth in subsection (2), a fine of not less than
6 ~~\$1,000,000.00~~ **\$2,000,000.00** and, in addition to a fine, a sentence
7 of 5 years' imprisonment.

8 (5) To find a defendant civilly or criminally liable for
9 substantial endangerment under subsection (3) or (4), the court
10 shall determine that the defendant knowingly or recklessly acted in
11 such a manner as to cause a danger of death or serious bodily
12 injury and that either of the following occurred:

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

16 (b) The defendant acted in gross disregard of the standard of
17 care that any reasonable person should observe in similar
18 circumstances.

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

23 (7) A civil fine or other award ordered paid pursuant to this
24 section shall do both of the following:

25 (a) Be payable to the state of Michigan and credited to the
26 general fund.

27 (b) Constitute a lien on any property, of any nature or kind,

1 owned by the defendant.

2 (8) A lien under subsection (7)(b) ~~shall take~~ **TAKES** effect
3 and ~~have~~ **HAS** priority over all other liens and encumbrances
4 except those filed or recorded prior to the date of judgment only
5 if notice of the lien is filed or recorded as required by state or
6 federal law.

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

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