

**SUBSTITUTE FOR  
SENATE BILL NO. 1348**

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

1 liability.

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

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

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

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

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

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

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

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

1 share is determined to be uncollectible continues to be subject to  
2 contribution and to any continuing liability to the state.

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

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

25 (7) If the state obtains less than complete relief from a  
26 person who has resolved his or her liability to the state in an  
27 administrative or judicially approved consent order under this

1 part, the state may bring an action against any other person liable  
2 under section 20126 who has not resolved his or her liability.

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

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

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

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

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

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

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

1 (e) A civil fine of not more than \$1,000.00 for each day of  
2 noncompliance without sufficient cause with a written request of  
3 the department pursuant to section 20114(1)(h). A fine imposed  
4 under this subdivision shall be based on the seriousness of the  
5 violation and any good faith efforts of the person to comply with  
6 the request of the department.

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

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

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

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

21 (j) Enforcement of the reporting requirements under section  
22 ~~20114(1), (3), and (6)~~ 20114.

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

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

1 NOTIFY THE DEPARTMENT WITHIN 24 HOURS AFTER OBTAINING KNOWLEDGE OF  
2 THE RELEASE OR WHO SUBMITS IN SUCH NOTIFICATION ANY INFORMATION  
3 THAT THE PERSON KNOWS TO BE FALSE OR MISLEADING, IS SUBJECT TO A  
4 CIVIL FINE OF NOT MORE THAN \$25,000.00 FOR EACH DAY IN WHICH THE  
5 VIOLATION OCCURS OR THE FAILURE TO COMPLY CONTINUES. A FINE IMPOSED  
6 UNDER THIS SUBSECTION SHALL BE BASED UPON THE SERIOUSNESS OF THE  
7 VIOLATION AND ANY GOOD-FAITH EFFORTS BY THE VIOLATOR TO COMPLY WITH  
8 THIS SUBSECTION.

9 (3) A PERSON WHO IS RESPONSIBLE FOR AN ACTIVITY CAUSING A  
10 RELEASE IN EXCESS OF THE CONCENTRATIONS THAT SATISFY THE CRITERIA  
11 ESTABLISHED PURSUANT TO SECTION 20120A(1) (A) OR (B), AS APPROPRIATE  
12 FOR THE USE OF THE PROPERTY, IS SUBJECT TO A CIVIL FINE AS PROVIDED  
13 IN THIS PART UNLESS A FINE OR PENALTY HAS ALREADY BEEN IMPOSED FOR  
14 THE RELEASE UNDER ANOTHER PART OF THIS ACT. HOWEVER, A CIVIL FINE  
15 SHALL NOT BE IMPOSED UNDER THIS SUBSECTION AGAINST A PERSON WHO  
16 MADE A GOOD-FAITH EFFORT TO PREVENT THE RELEASE AND TO COMPLY WITH  
17 THE PROVISIONS OF THIS PART. THIS SUBSECTION DOES NOT APPLY TO A  
18 RELEASE FROM AN UNDERGROUND STORAGE TANK SYSTEM AS DEFINED IN PART  
19 213.

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

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

1 release occurred.

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

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

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

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

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

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

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

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

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

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

17 (2) A person who does any of the following is guilty of a  
18 felony and shall be fined not less than \$2,500.00 or more than  
19 \$25,000.00 for each violation:

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

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



1 ~~rules promulgated under this part.~~

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

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

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

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

26 (5) To find a defendant criminally liable for substantial  
27 endangerment under subsection (4), the court shall determine that

1 the defendant knowingly or recklessly acted in such a manner as to  
2 cause a danger of death or serious bodily injury and that either of  
3 the following has occurred:

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

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

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

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

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

