

SENATE BILL No. 46

January 22, 2003, Introduced by Senators PATTERSON, GILBERT, BRATER, CASSIS, TOY, BISHOP and GOSCHKA 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
2 general to commence a civil action for appropriate relief,
3 including a permanent or temporary injunction, for a violation of
4 this part or a provision of a permit, order, rule, or stipulation
5 of the department. An action under this subsection may be
6 brought in the circuit court for the county of Ingham or for the
7 county in which the defendant is located, resides, or is doing
8 business. The court has jurisdiction to restrain the violation
9 and to require compliance. In addition to any other relief
10 granted under this subsection, the court shall impose a civil
11 fine of not less than ~~\$2,500.00~~ **\$5,000.00** and may award

1 reasonable attorney fees and costs to the prevailing party.

2 However, the maximum fine imposed by the court shall be not more
3 than ~~-\$25,000.00-~~ **\$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,
8 representation, or certification in an application for or **on a**
9 form pertaining to a permit or in a notice or report required by
10 the terms and conditions of an issued permit, or who
11 intentionally renders inaccurate a monitoring device or record
12 required to be maintained by the department, is guilty of a
13 felony and shall be fined not less than ~~-\$2,500.00-~~ **\$5,000.00** or
14 more than ~~-\$25,000.00-~~ **\$50,000.00** for each violation. The court
15 may impose an additional fine of not more than ~~-\$25,000.00-~~
16 **\$50,000.00** for each day during which the unlawful discharge
17 occurred. If the conviction is for a violation committed after a
18 first conviction of the person under this subsection, the court
19 shall impose a fine of not less than ~~-\$25,000.00-~~ **\$50,000.00** per
20 day and not more than ~~-\$50,000.00-~~ **\$100,000.00** per day of
21 violation. Upon conviction, in addition to a fine, the court in
22 its discretion may sentence the defendant to imprisonment for not
23 more than ~~2~~ **4** years or impose probation upon a person for a
24 violation of this part. With the exception of the issuance of
25 criminal complaints, issuance of warrants, and the holding of an
26 arraignment, the circuit court for the county in which the
27 violation occurred has exclusive jurisdiction. However, ~~the~~ **a**

1 person ~~shall~~ **is** not ~~be~~ subject to the penalties of this
2 subsection if the discharge of the effluent is in conformance
3 with and obedient to a rule, order, or permit of the department.
4 In addition to a fine, the attorney general may file a civil suit
5 in a court of competent jurisdiction to recover the full value of
6 the injuries done to the natural resources of the state and the
7 costs of surveillance and enforcement by the state resulting from
8 the violation.

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

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

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

26 (a) The defendant had an actual awareness, belief, or
27 understanding that his or her conduct would cause a substantial

1 danger of death or serious bodily injury.

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

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

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

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

12 **(b) Be credited to the general fund if the fine or award was**
13 **recovered in a civil action.**

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

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

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

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

1 including the right to a refund of income taxes paid.