



# HOUSE BILL No. 5233

December 9, 1993, Introduced by Reps. Middaugh, Alley and Gnodtke and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend section 24a of Act No. 518 of the Public Acts of 1988, entitled as amended

"Michigan underground storage tank financial assurance act," as amended by Act No. 132 of the Public Acts of 1993, being section 299.824a of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 24a of Act No. 518 of the Public Acts of  
2 1988, as amended by Act No. 132 of the Public Acts of 1993, being  
3 section 299.824a of the Michigan Compiled Laws, is amended to  
4 read as follows:

5 Sec. 24a. (1) Beginning August 8, 1993, a person who makes  
6 or submits or causes to be made or submitted, either directly or  
7 indirectly, any statement, report, application, claim, bid, work  
8 invoice, or other request for payment or indemnification under  
9 this act, knowing the statement, report, application, claim, bid,

1 work invoice, or other request for payment or indemnification is  
2 false or misleading is guilty of a felony punishable by imprison-  
3 ment for not more than 5 years or a fine of not more than  
4 \$50,000.00, or both. In addition to any penalty imposed under  
5 this subsection, a person convicted under this subsection shall  
6 pay restitution to the fund for the amount received in violation  
7 of this subsection.

8       (2) A person who makes or submits or causes to be made or  
9 submitted, either directly or indirectly, any statement or  
10 report, application, claim, bid, work invoice, or other request  
11 for payment or indemnification under this act, knowing that the  
12 statement, report, application, claim, bid, work invoice, or  
13 other request for payment or indemnification is false, mislead-  
14 ing, or fraudulent, or commits a fraudulent practice is subject  
15 to a civil fine of not more than \$50,000.00 or twice the amount  
16 submitted, whichever is greater. In addition to any civil fine  
17 imposed under this subsection, a person found responsible under  
18 this subsection shall pay restitution to the fund for the amount  
19 received in violation of this subsection. The legislature  
20 intends that this subsection be given retroactive application.

21       (3) As used in subsection (2), "fraudulent" or "fraudulent  
22 practice" includes, but is not limited to, the following:

23       (a) Submitting a work invoice for the excavation, hauling,  
24 disposal, or provision of soil, sand, or backfill for an amount  
25 greater than the legal capacity of the carrying vehicle or for  
26 more than was actually carried, excavated, disposed, or  
27 provided.

1 (b) Submission of paperwork for services done or work  
2 provided that was not in fact provided or that was not directly  
3 provided by the individual indicated on the paperwork.

4 (c) Contaminating an otherwise clean resource or site with  
5 contaminated soil or product from a contaminated resource or  
6 site.

7 (d) Returning any load of contaminated soil to its original  
8 site for reasons other than remediation of the soil.

9 (e) Intentional causing of damage or damage caused as the  
10 result of gross negligence to an underground storage tank system  
11 that results in a release at a site.

12 (f) Placing an underground storage tank system at a contami-  
13 nated site where no underground storage tank system previously  
14 existed for purposes of disguising the source of contamination or  
15 to obtain funding under this act.

16 (g) Submitting a work invoice for the excavation of soil  
17 from a site that was removed for reasons other than removal of  
18 the underground storage tank system or remediation.

19 (h) Any intentional act or act of gross negligence that  
20 causes or allows contamination to spread at a site.

21 (i) Registration of a nonexistent underground storage tank  
22 system with the department.

23 (j) Loaning to an owner or operator the deductible amount  
24 required under section 13 and then submitting or causing to be  
25 submitted inflated claims or invoices designed to recoup the  
26 deductible amount.

1 (k) Confirming a release without simultaneously providing  
2 notice to the owner or operator.

3 (l) Inflating bills or work invoices, or both, by adding  
4 charges for work that was not performed.

5 (m) Submitting a false or misleading laboratory report.

6 (n) Submitting bills or work invoices, or both, for sam-  
7 pling, testing, monitoring, or excavation that are not justified  
8 by the site condition.

9 (o) Falsely characterizing the contents of an underground  
10 storage tank system for purposes of obtaining funding under this  
11 act.

12 (p) Submitting or causing to be submitted bills or work  
13 invoices by or from a person who did not directly provide the  
14 service.

15 (q) Characterizing legal services as consulting services for  
16 purposes of obtaining funding under this act.

17 (r) Misrepresenting or concealing the identity, credentials,  
18 affiliation, or qualifications of principals or persons seeking,  
19 either directly or indirectly, funding or approval for participa-  
20 tion under this act.

21 (s) Falsifying a signature on a claim application or a work  
22 invoice.

23 (t) Failing to accurately disclose the actual amount and  
24 carrier of unencumbered insurance coverage available for new  
25 environmental impairment or professional liability claims.

1 (u) Any other act or omission of a false, fraudulent, or  
2 misleading nature undertaken in furtherance of obtaining funding  
3 under this act.

4 (4) The attorney general or county prosecutor may conduct an  
5 investigation of an alleged violation of this section and bring  
6 an action for a violation of this section.

7 (5) If the attorney general or county prosecutor has reason-  
8 able cause to believe that a person has information or is in pos-  
9 session, custody, or control of any document or records, however  
10 stored or embodied, or tangible object relevant to an investigat-  
11 tion for violation of this act, A CRIME AGAINST THE FUND, OR AN  
12 ATTEMPTED VIOLATION OF THIS ACT OR CRIME AGAINST THE FUND, the  
13 attorney general or county prosecutor may, before bringing any  
14 action, make an ex parte request to a magistrate for issuance of  
15 a subpoena requiring that person to appear and be examined under  
16 oath or to produce the document, records, or object for inspec-  
17 tion and copying, or both. Service may be accomplished by any  
18 means described in the Michigan court rules. Requests made by  
19 the attorney general may be brought in Ingham county.

20 (6) If a person objects to or otherwise fails to comply with  
21 the subpoena served under subsection (5), an action may be  
22 brought in district court to enforce the demand. Actions filed  
23 by the attorney general may be brought in Ingham county.

24 (7) The attorney general or county prosecutor may apply to  
25 the district court for an order granting immunity to any person  
26 who refuses or objects to providing information, documents,  
27 records, or objects sought pursuant to this section. If the

1 judge is satisfied that it is in the interest of justice that  
2 immunity be granted, he or she shall enter an order granting  
3 immunity to the person and requiring them to appear and be  
4 examined under oath, or to produce the document, records, or  
5 object for inspection and copying, or both.

6 (8) A person who fails to comply with a subpoena issued pur-  
7 suant to subsection (5), or a requirement to appear and be  
8 examined pursuant to subsection (7), is subject to a civil fine  
9 of not more than \$25,000.00 for each day of continued  
10 noncompliance.

11 (9) In addition to any civil fines or criminal penalties  
12 imposed under this act or the criminal laws of this state, the  
13 person shall repay any money obtained directly or indirectly  
14 under this act. Money owed pursuant to this section constitutes  
15 a claim and lien by the fund upon any real or personal property  
16 owned either directly or indirectly by the person. This lien  
17 shall attach regardless of whether the person is insolvent and  
18 may not be extinguished or avoided by bankruptcy. The lien  
19 imposed by this section has the force and effect of a first in  
20 time and right judgment lien.

21 (10) Subsection (1) does not preclude prosecutions under  
22 other laws of the state including, but not limited to, section  
23 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, Act  
24 No. 328 of the Public Acts of 1931, being sections 750.157a,  
25 750.218, 750.248, 750.249, 750.280, and 750.422 of the Michigan  
26 Compiled Laws.

1       (11) All civil fines collected pursuant to this section  
2 shall be apportioned in the following manner:

3       (a) Fifty percent shall be deposited in the general fund and  
4 shall be used by the department to fund fraud investigations  
5 under this act.

6       (b) Twenty-five percent shall be paid to the office of the  
7 county prosecutor or attorney general, whichever office brought  
8 the action.

9       (c) Twenty-five percent shall be paid to a local police  
10 department or sheriff's office, or city or county health depart-  
11 ment, if investigation by that office or department led to the  
12 bringing of the action. If more than 1 office or department is  
13 eligible for payment under this subsection, division of payment  
14 shall be on an equal basis. If there is not a local office or  
15 department that is entitled to payment under this subdivision,  
16 the money shall be forwarded to the state treasurer for deposit  
17 into the emergency response fund created in section 7.