

S.B. 5

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 11151 (MCL 324.11151).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11151. (1) If the department finds that a person is in
2 violation of a permit, license, rule promulgated under this part,
3 or requirement of this part including a corrective action
4 requirement of this part, the department may issue an order
5 requiring the person to comply with the permit, license, rule, or
6 requirement of this part including a corrective action require-
7 ment of this part. The attorney general or a person may commence
8 a civil action against a person, the department, or a health
9 department certified under section 11145 for appropriate relief,
10 including injunctive relief for a violation of this part
11 including a corrective action requirement of this part, or a rule

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1 promulgated under this part. An action under this subsection may
2 be brought in the circuit court for the county of Ingham or for
3 the county in which the defendant is located, resides, or is
4 doing business. The court has jurisdiction to restrain the vio-
5 lation and to require compliance. In addition to any other
6 relief granted under this subsection, the court may impose a
7 civil fine of not more than \$25,000.00 for each instance of vio-
8 lation and, if the violation is continuous, for each day of con-
9 tinued noncompliance. A fine collected under this subsection
10 shall be deposited in the general fund of the state.

11 (2) A person who transports, treats, stores, disposes, or
12 generates hazardous waste in violation of this part, or contrary
13 to a permit, license, order, or rule issued or promulgated under
14 this part, or who makes a false statement, representation, or
15 certification in an application for, or form pertaining to, a
16 permit, license, or order or in a notice or report required by
17 the terms and conditions of an issued permit, license, or order,
18 or a person who violates section 11144(5), is guilty of a misde-
19 meanor punishable by a fine of not more than \$25,000.00 for each
20 instance of violation and, if the violation is continuous, for
21 each day of violation, or imprisonment for not more than 1 year,
22 or both. If the conviction is for a violation committed after a
23 first conviction of the person under this subsection, the person
24 is guilty of a misdemeanor punishable by a fine of not more than
25 \$50,000.00 for each instance of violation and, if the violation
26 is continuous, for each day of violation, or by imprisonment for
27 not more than 2 years, or both. ADDITIONALLY, A PERSON WHO IS

1 CONVICTED OF A VIOLATION UNDER THIS SUBSECTION SHALL BE ORDERED
2 TO PAY ALL COSTS OF CORRECTIVE ACTION ASSOCIATED WITH THE
3 VIOLATION.

4 (3) Any person who knowingly stores, treats, transports, or
5 disposes of any hazardous waste in violation of subsection (2)
6 and who knows at that time that he or she thereby places another
7 person in imminent danger of death or serious bodily injury, and
8 if his or her conduct in the circumstances manifests an unjusti-
9 fied and inexcusable disregard for human life, or if his or her
10 conduct in the circumstances manifests an extreme indifference
11 for human life, upon conviction, is subject to a fine of not more
12 than \$250,000.00 or imprisonment for not more than 2 years, or
13 both, except that any person whose actions constitute an extreme
14 indifference for human life, upon conviction, is subject to a
15 fine of not more than \$250,000.00 or imprisonment for not more
16 than 5 years, or both. A defendant that is not an individual and
17 not a governmental entity, upon conviction, is subject to a fine
18 of not more than \$1,000,000.00. ADDITIONALLY, A PERSON WHO IS
19 CONVICTED OF A VIOLATION UNDER THIS SUBSECTION SHALL BE ORDERED
20 TO PAY ALL COSTS OF CORRECTIVE ACTION ASSOCIATED WITH THE
21 VIOLATION.

22 (4) For the purposes of subsection (3), a person's state of
23 mind is knowing with respect to:

24 (a) His or her conduct, if he or she is aware of the nature
25 of his or her conduct.

26 (b) An existing circumstance, if he or she is aware or
27 believes that the circumstance exists.

1 (c) A result of his or her conduct, if he or she is aware or
2 believes that his or her conduct is substantially certain to
3 cause danger of death or serious bodily injury.

4 (5) For purposes of subsection (3), in determining whether a
5 defendant who is an individual knew that his or her conduct
6 placed another person in imminent danger of death or serious
7 bodily injury, both of the following apply:

8 (a) The person is responsible only for actual awareness or
9 actual belief that he or she possessed.

10 (b) Knowledge possessed by a person other than the defendant
11 but not by the defendant himself or herself may not be attributed
12 to the defendant. However, in proving the defendant's possession
13 of actual knowledge, circumstantial evidence may be used, includ-
14 ing evidence that the defendant took affirmative steps to shield
15 himself or herself from relevant information.

16 (6) It is an affirmative defense to a prosecution under this
17 part that the conduct charged was consented to by the person
18 endangered and that the danger and conduct charged were reason-
19 ably foreseeable hazards of either of the following:

20 (a) An occupation, a business, or a profession.

21 (b) Medical treatment or professionally approved methods and
22 the other person had been made aware of the risks involved prior
23 to giving consent.

24 (7) The defendant may establish an affirmative defense under
25 subsection (6) by a preponderance of the evidence.

26 (8) For purposes of subsection (3), "serious bodily injury"
27 means each of the following:

1 (a) Bodily injury that involves a substantial risk of
2 death.

3 (b) Unconsciousness.

4 (c) Extreme physical pain.

5 (d) Protracted and obvious disfigurement.

6 (e) Protracted loss or impairment of the function of a
7 bodily member, organ, or mental faculty.

8 (9) In addition to a fine, the attorney general may bring an
9 action in a court of competent jurisdiction to recover the full
10 value of the damage done to the natural resources of this state
11 and the costs of surveillance and enforcement by the state
12 resulting from the violation. The damages and cost collected
13 under this subsection shall be deposited in the general fund if
14 the damages or costs result from impairment or destruction of the
15 fish, wildlife, or other natural resources of the state and shall
16 be used to restore, rehabilitate, or mitigate the damage to those
17 resources in the affected area, and for the specific resource to
18 which the damages occurred.

19 (10) The court, in issuing a final order in an action
20 brought under this part, may award costs of litigation, including
21 reasonable attorney and expert witness fees to a party, if the
22 court determines that the award is appropriate.

23 (11) A person who has an interest that is or may be affected
24 by a civil or administrative action commenced under this part has
25 a right to intervene in that action.