

HOUSE BILL No. 5410

December 4, 1997, Introduced by Reps. Tesanovich, Hale, Prusi, Anthony, Gagliardi, DeHart, Kelly, Kaza, Bogardus, Alley, McBryde, Jaye, Bodem, Owen, Walberg, Oxender, Lowe, Dobb, Cropsey, Goschka, Llewellyn, Cherry, Whyman, Parks, Scott, Vaughn, Profit and Middleton and referred to the Committee on Conservation, Environment and Recreation.

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 gen-
2 eral to commence a civil action for appropriate relief, including
3 a permanent or temporary injunction, for a violation of this part
4 or a provision of a permit, order, rule, or stipulation of the
5 department. An action under this subsection ~~may~~ SHALL be
6 brought in the circuit court ~~for the county of Ingham or~~ for
7 the county in which the defendant is located, resides, or is
8 doing business. The court has jurisdiction to restrain the vio-
9 lation and to require compliance. In addition to any other
10 relief granted under this subsection, the court shall impose a
11 civil fine of not less than \$2,500.00 and may award reasonable

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

1 in conformance with and obedient to a rule, order, or permit of
2 the department. In addition to a fine, the attorney general may
3 file a civil suit in a court of competent jurisdiction to recover
4 the full value of the injuries done to the natural resources of
5 the state and the costs of surveillance and enforcement by the
6 state resulting from the violation.

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

12 (4) Upon a finding by the court that the actions of a crimi-
13 nal defendant pose or posed a substantial endangerment to the
14 public health, safety, or welfare, the court shall impose, in
15 addition to the penalties set forth in subsection (2), a fine of
16 not less than \$1,000,000.00 and, in addition to a fine, a sen-
17 tence of 5 years' imprisonment.

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

24 (a) The defendant had an actual awareness, belief, or under-
25 standing that his or her conduct would cause a substantial danger
26 of death or serious bodily injury.

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

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

8 (7) Any fine or other award ordered paid pursuant to this
9 section shall ~~do both of the following: (a) Be~~ BE payable to
10 the state of Michigan and credited to the general fund. ~~(b)~~
11 ~~Constitute~~ THE FINE OR OTHER AWARD CONSTITUTES a lien on any
12 property, of any nature or kind, owned by the defendant.

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

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

22 (10) In addition to any other method of collection, any fine
23 or other award ordered paid may be recovered by right of setoff
24 to any debt owed to the defendant by ~~the~~ THIS state, ~~of~~
25 ~~Michigan,~~ including the right to a refund of income taxes paid.