

HOUSE BILL No. 4007

January 8, 2003, Introduced by Reps. Gaffney, Ward, Vander Veen, Hood, Hune and Bieda and referred to the Committee on Land Use and Environment.

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 form
9 pertaining 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-~~ **\$5,000.00** or more than
14 ~~-\$25,000.00-~~ **\$50,000.00** for each violation. The court may impose
15 an additional fine of not more than ~~-\$25,000.00-~~ **\$50,000.00** for
16 each day during which the unlawful discharge occurred. If the
17 conviction is for a violation committed after a first conviction
18 of the person under this subsection, the court shall impose a
19 fine of not less than ~~-\$25,000.00-~~ **\$50,000.00** per day and not
20 more than ~~-\$50,000.00-~~ **\$100,000.00** per day of violation. Upon
21 conviction, in addition to a fine, the court in its discretion
22 may sentence the defendant to imprisonment for not more than
23 2 years or impose probation upon a person for a violation of this
24 part. With the exception of the issuance of criminal complaints,
25 issuance of warrants, and the holding of an arraignment, the
26 circuit court for the county in which the violation occurred has
27 exclusive jurisdiction. However, the person shall not be subject

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

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

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

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

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

1 (b) The defendant acted in gross disregard of the standard of
2 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 payable to the~~
10 ~~state of Michigan and credited to the general fund. (b)~~
11 ~~Constitute~~ **constitutes** a lien on any property, of any nature or
12 kind, owned by the defendant.

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

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

22 **(10) A civil fine or other award paid pursuant to this**
23 **section shall be payable to the state of Michigan and credited to**
24 **the general fund.**

25 **(11) ~~-(10)-~~** In addition to any other method of collection,
26 any fine or other award ordered paid may be recovered by right of
27 setoff to any debt owed to the defendant by the state of

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