

HOUSE BILL NO. 6089

May 10, 2022, Introduced by Reps. Whitsett, Yancey, Hope, Steenland, Thanedar, Scott, Breen, Brenda Carter, Kuppa, Pohutsky, Young, Aiyash, Camilleri, Morse, Cavanagh, Coleman, Tyrone Carter, Liberati, Garza, Cynthia Johnson, Brabec, Clemente, Koleszar, LaFave, Brixie, Berman, Bezotte, O'Malley, Rabhi and Jones and referred to the Committee on Regulatory Reform.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 3115, 5501, 5529, 5530, 11151, and 12115 (MCL
324.3115, 324.5501, 324.5529, 324.5530, 324.11151, and 324.12115),
section 3115 as amended by 2004 PA 143, section 5501 as amended by
2019 PA 119, section 11151 as amended by 1998 PA 439, and section

12115 as amended by 2015 PA 224, and by adding section 16908e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3115. (1) The department may request the attorney general
2 to commence a civil action for appropriate relief, including a
3 permanent or temporary injunction, for a violation of this part or
4 a provision of a permit or order issued or rule promulgated under
5 this part. An action under this subsection may be brought in the
6 circuit court for the county of Ingham or for the county in which
7 the defendant is located, resides, or is doing business. If
8 requested by the defendant within 21 days after service of process,
9 the court shall grant a change of venue to the circuit court for
10 the county of Ingham or for the county in which the alleged
11 violation occurred, is occurring, or, in the event of a threat of
12 violation, ~~will~~**may** occur. The court has jurisdiction to restrain
13 the violation and to require compliance. In addition to any other
14 relief granted under this subsection, the court, except as
15 otherwise provided in this subsection, shall impose a civil fine of
16 not less than \$2,500.00. ~~and the~~**In addition, the** court may award
17 reasonable attorney fees and costs to the prevailing party.
18 However, all of the following apply:

19 (a) ~~The maximum fine imposed by the court~~**Subject to**
20 **subdivisions (b), (c), and (d), the civil fine** shall ~~be~~**not be** more
21 than \$25,000.00 per day of violation.

22 (b) **Subject to subdivisions (d) and (e), if the violation is**
23 **committed by an automobile graveyard, as defined in section 5501,**
24 **the civil fine shall not be more than \$50,000.00 per day of**
25 **violation.**

26 (c) ~~(b)~~**For a failure to report a release to the department or**
27 **to the primary public safety answering point under section**

1 3111b(1), the ~~court shall impose a~~ civil fine ~~of~~ **shall** not **be** more
 2 than \$2,500.00.

3 **(d)** ~~(c)~~ For a failure to report a release to the local health
 4 department under section 3111b(2), the ~~court shall impose a~~ civil
 5 fine ~~of~~ **shall** not **be** more than \$500.00.

6 (2) A person who at the time of the violation knew or should
 7 have known that he or she discharged a substance contrary to this
 8 part, or contrary to a permit or order issued or rule promulgated
 9 under this part, or who intentionally makes a false statement,
 10 representation, or certification in an application for or form
 11 pertaining to a permit or in a notice or report required by the
 12 terms and conditions of an issued permit, or who intentionally
 13 renders inaccurate a monitoring device or record required to be
 14 maintained by the department, is guilty of a felony and shall be
 15 fined not less than \$2,500.00 or more than \$25,000.00 for each
 16 violation. The court may impose an additional fine of not more than
 17 \$25,000.00 for each day during which the unlawful discharge
 18 occurred. If the conviction is for a violation committed after a
 19 first conviction of the person under this subsection, the ~~court~~
 20 ~~shall impose a fine of~~ **person is guilty of a felony and shall be**
 21 **fined** not less than \$25,000.00 per day ~~and not~~ **or** more than
 22 \$50,000.00 per day of violation . ~~Upon conviction, in addition to a~~
 23 ~~fine, the court in its discretion may sentence the defendant to~~
 24 ~~imprisonment and may be imprisoned~~ for not more than 2 years. ~~or~~
 25 ~~impose probation upon a person for a violation of this part.~~ With
 26 the exception of the issuance of criminal complaints, issuance of
 27 warrants, and the holding of an arraignment, the circuit court for
 28 the county in which the violation occurred has exclusive
 29 jurisdiction. However, the person ~~shall~~ **is** not ~~be~~ subject to the

penalties of this subsection if the discharge of the effluent is in ~~conformance with and obedient to~~ **compliance with** a rule, order, or permit of the department. In addition to a fine, the attorney general may file a civil suit in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of ~~the~~ **this** state and the costs of surveillance and enforcement ~~by the~~ **incurred by this** state ~~resulting from~~ **as a result of** the violation.

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

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

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

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

(b) The defendant acted in gross disregard of the standard of care that ~~any~~ **a** reasonable person should observe in similar

1 circumstances.

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

6 (7) ~~A Both of the following apply to a~~ civil fine or ~~other~~
7 award ~~ordered paid pursuant to~~**of attorney fees, costs of**
8 **surveillance and enforcement, or other costs under** this section:
9 ~~shall do both of the following:~~

10 (a) ~~Be~~**It is** payable to the state of Michigan and **shall be**
11 credited to the general fund.

12 (b) ~~Constitute~~**It constitutes** a lien on any property ~~, of any~~
13 ~~nature or kind,~~ owned by the defendant.

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

19 (9) ~~A~~**The attorney general shall terminate a** lien filed or
20 recorded pursuant to subsection (8), ~~shall be terminated according~~
21 ~~to~~**in compliance with** the procedures required by state or federal
22 law, within 14 days after the fine or other award ordered to be
23 paid is paid.

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

28 Sec. 5501. As used in this part:

29 (a) "Air contaminant" means a dust, fume, gas, mist, odor,

1 smoke, vapor, or any combination thereof.

2 (b) "Air pollution" means the presence in the outdoor
 3 atmosphere of air contaminants in quantities, of characteristics,
 4 under conditions, ~~and circumstances,~~ and of a duration that are or
 5 can become injurious to human health or welfare, to animal life, to
 6 plant life, or to property, or that interfere with the enjoyment of
 7 life and property in this state. Air pollution does not mean any
 8 health or safety hazard that is an aspect of employer-employee
 9 relationships. With respect to any mode of transportation, nothing
 10 in this part or in the rules promulgated under this part shall be
 11 inconsistent with the federal regulations, emission limits,
 12 standards, or requirements on various modes of transportation. Air
 13 pollution does not mean those usual and ordinary odors associated
 14 with a farm operation if the person engaged in the farm operation
 15 is following generally accepted agricultural and management
 16 practices.

17 (c) "Air pollution control equipment" means any method,
 18 process, or equipment that removes, reduces, or renders less
 19 noxious air contaminants discharged into the atmosphere.

20 (d) **"Automobile graveyard" means the operator of an automobile**
 21 **graveyard as defined in section 1 of 1966 PA 219, MCL 252.201,**
 22 **located in a municipality with a population of more than 400,000.**

23 (e) ~~(d)~~ "Category A facility" means a fee-subject facility
 24 that is an electric provider and is any of the following:

25 (i) A ~~major~~ stationary source as defined in 42 USC 7602.

26 (ii) An affected source as defined ~~pursuant to~~ **in** 42 USC 7651a.

27 (iii) A major stationary source as defined in 42 USC 7491.

28 (f) ~~(e)~~ "Category B facility" means a fee-subject facility
 29 that is not an electric provider and is any of the following:

(i) A ~~major~~ stationary source as defined in 42 USC 7602.

(ii) An affected source as defined pursuant to 42 USC 7651a.

(iii) A major stationary source as defined in 42 USC 7491.

(g) ~~(f)~~ "Category C facility" means a fee-subject facility that is not a category A or category B facility and that is a major source as defined in 42 USC 7412.

(h) ~~(g)~~ "Category D facility" means a fee-subject facility that is not a category A, category B, or category C facility and that is subject to requirements of 42 USC 7411.

However, a source is not a category D facility if any of the following apply:

(i) All equipment at the source meets a permit to install exemption in R 336.1280 to R 336.1291 of the Michigan Administrative Code and does not have an active permit to install.

(ii) The source is stripper well property as defined in 26 USC 613A(c) (6) (E) .

(i) ~~(h)~~ "Category E facility" means a fee-subject facility that is not a category A, category B, category C, or category D facility and that has an active title V opt-out permit.

(j) ~~(i)~~ "Category F facility" means a fee-subject facility that is not a category A, category B, category C, category D, or category E facility.

(k) ~~(j)~~ "Clean air act" means ~~chapter 360, 69 Stat 322, 42 USC 7401 to 7671q, and regulations promulgated under the clean air act.~~ **thereunder.**

(l) "Collection site" means the operator of a collection site as defined in section 16901.

(m) "Distressed vehicle transporter" means that term as defined in section 12b of the Michigan vehicle code, 1949 PA 300,

1 **MCL 257.12b.**

2 (n) ~~(k)~~ "Electric provider" means that term as defined in
 3 section 5 of the clean and renewable energy and energy waste
 4 reduction act, 2008 PA 295, MCL 460.1005.

5 (o) ~~(l)~~ "Emission" means the emission of an air contaminant.

6 (p) ~~(m)~~ "Farm operation" means that term as defined in section
 7 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

8 (q) ~~(n)~~ "Fee-subject air pollutant" means particulates,
 9 expressed as PM-10 ~~pursuant to~~ **as defined in** R 336.1116(k) of the
 10 Michigan Administrative Code, sulfur dioxide, volatile organic
 11 compounds, nitrogen oxides, ozone, lead, and any pollutant
 12 regulated under 42 USC 7411 or 7412 or title III of the clean air
 13 act, ~~chapter 360, 77 Stat 400,~~ 42 USC 7601 to 7628.

14 (r) ~~(o)~~ "Fee-subject emissions" means emissions of fee-subject
 15 air pollutants.

16 (s) ~~(p)~~ "Fee-subject facility" means the following sources:

17 (i) ~~Any A~~ major source as defined in 40 CFR 70.2.

18 (ii) ~~Any A~~ source, including an area source, **currently** subject
 19 to a standard, limitation, or other requirement under 42 USC 7411.
 20 ~~, when the standard, limitation, or other requirement becomes~~
 21 ~~applicable to that source.~~

22 (iii) ~~Any A~~ source, including an area source, **currently** subject
 23 to a standard, limitation, or other requirement under 42 USC 7412.
 24 ~~, when the standard, limitation, or other requirement becomes~~
 25 ~~applicable to that source.~~ However, a source is not a fee-subject
 26 facility solely because it is subject to a regulation, limitation,
 27 or requirement under 42 USC 7412(r).

28 (iv) ~~Any An~~ affected source under title IV.

29 (v) Any other source in a source category designated by the

1 administrator of the United States Environmental Protection Agency
 2 as required to obtain an operating permit under title V, when the
 3 standard, limitation, or other requirement becomes applicable to
 4 that source.

5 (vi) ~~Any~~ **A** source with an active title V opt-out permit.

6 (t) ~~(q)~~ "Fund" means the emissions control fund created in
 7 section 5521.

8 (u) ~~(r)~~ "General permit" means a permit to install, **a** permit
 9 to operate ~~authorized~~ **issued** pursuant to rules promulgated under
 10 section 5505(6), or an operating permit **issued** under section 5506,
 11 for a category of similar sources, processes, or process equipment.
 12 General provisions for issuance of general permits shall be
 13 provided for by rule.

14 (v) ~~(s)~~ "Generally accepted agricultural and management
 15 practices" means that term as defined in section 2 of the Michigan
 16 right to farm act, 1981 PA 93, MCL 286.472.

17 (w) ~~(t)~~ "Major emitting facility" means a stationary source
 18 that emits 100 tons or more per year of any of the following:

19 (i) Particulates.

20 (ii) Sulfur dioxides.

21 (iii) Volatile organic compounds.

22 (iv) Oxides of nitrogen.

23 (x) **"Motor vehicle related business" means any of the**
 24 **following if the establishment is located in a municipality with a**
 25 **population of more than 400,000:**

26 (i) **A collection site.**

27 (ii) **A distressed vehicle transporter.**

28 (iii) **A scrap tire processor.**

29 (iv) **A towing service storage yard.**

1 (v) A used tire dealer.

2 (vi) A used vehicle parts dealer.

3 (vii) A vehicle repair service.

4 (viii) A vehicle scrap metal processor.

5 (y) ~~(u)~~—"Process", unless the context requires a different
6 meaning, means an action, operation, or a series of actions or
7 operations at a source that emits or has the potential to emit an
8 air contaminant.

9 (z) ~~(v)~~—"Process equipment" means all equipment, devices, and
10 auxiliary components, including air pollution control equipment,
11 stacks, and other emission points, used in a process.

12 (aa) ~~(w)~~—"Responsible official" means, for the purposes of
13 signing and certifying as to the truth, accuracy, and completeness
14 of permit applications, monitoring reports, and compliance
15 certifications, any of the following:

16 (i) For a corporation: a president, secretary, treasurer, or
17 vice-president in charge of a principal business function, or any
18 other person who performs similar policy or decision making
19 functions for the corporation, or, **if either of the following**
20 **applies**, an authorized representative of that person: ~~if the~~

21 (A) The representative is responsible for the overall
22 operation of 1 or more manufacturing, production, or operating
23 facilities applying for or subject to a permit under this part and
24 ~~either the facilities employ more than 250 persons or have annual~~
25 ~~sales or expenditures exceeding \$25,000,000.00. , or if the~~

26 (B) The delegation of authority to the representative is
27 approved in advance by the department.

28 (ii) For a partnership or sole proprietorship: a general
29 partner or the proprietor.

(iii) For a county or municipality or a state, federal, or other public agency: a principal executive officer or ranking elected official. For ~~this purpose,~~ **the purposes of this subparagraph**, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(iv) For sources affected by the acid rain program under title IV: the designated representative ~~insofar as~~ **with respect to** actions, standards, requirements, or prohibitions under that title. ~~are concerned.~~

(bb) ~~(*)~~ "Schedule of compliance" means, for a source not in compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act at the time of issuance of an operating permit, a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an applicable requirement and a schedule for submission of certified progress reports at least every 6 months. Schedule of compliance means, for a source in compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act at the time of issuance of an operating permit, a statement that the source will continue to comply with ~~these~~ **those** requirements. With respect to any applicable requirement of this part, rules promulgated under this part, and the clean air act effective after the date of issuance of an operating permit, the schedule of compliance shall contain a statement that the source will meet the requirements on a timely basis, unless the underlying applicable requirement requires a more detailed schedule.

(cc) "Scrap tire processor" means a scrap tire processor as

1 **defined in section 16901.**

2 (dd) ~~(y)~~ "Source" means a stationary source as defined in 42
 3 USC 7602, and has the same meaning as stationary source when used
 4 in comparable or applicable circumstances under the clean air act.
 5 A source includes all the processes and process equipment under
 6 common control that are located within a contiguous area, or a
 7 smaller group of processes and process equipment as requested by
 8 the owner or operator of the source, if ~~in accordance~~ **consistent**
 9 with the clean air act.

10 (ee) ~~(z)~~ "Title IV" means title ~~IV~~ **IV-A** of the clean air act,
 11 pertaining to acid deposition control, 42 USC 7651 to 7651o.

12 (ff) ~~(aa)~~ "Title V" means title V of the clean air act, 42 USC
 13 7661 to 7661f.

14 (gg) ~~(bb)~~ "Title V opt-out permit" means a permit to install
 15 that includes all of the following:

16 (i) Specified emission limits below thresholds for title V
 17 applicability.

18 (ii) Operational ~~restriction~~ **restrictions**.

19 (iii) Monitoring or record-keeping requirements to make
 20 subparagraphs (i) and (ii) practically enforceable through a permit.

21 (hh) **"Towing service storage yard" means the operator of a**
 22 **towing business with a private storage lot or yard where inoperable**
 23 **or distressed motor vehicles are temporarily held for retrieval or**
 24 **redemption by their owners, regardless of whether the business is a**
 25 **contractor for a police department.**

26 (ii) **"Used tire dealer" means a person engaged in the business**
 27 **of selling used motor vehicle tires, if the used tires constitute**
 28 **more than 10% of the person's inventory.**

29 (jj) **"Used vehicle parts dealer" means a used vehicle parts**

1 dealer as defined in section 78a of the Michigan vehicle code, 1949
 2 PA 300, MCL 257.78a. The sale of salvaged motor vehicle parts does
 3 not by itself meet this definition unless the salvaged motor
 4 vehicle parts constitute more than 10% of the person's inventory.

5 (kk) "Vehicle repair service" means the operator of an
 6 establishment providing passenger vehicle maintenance, repair, body
 7 work, or painting service within a completely enclosed building.
 8 Vehicle repair service includes, but is not limited to, car alarm
 9 installation and auto detailing shops.

10 (ll) "Vehicle scrap metal processor" means a vehicle scrap
 11 metal processor as defined in section 79b of the Michigan vehicle
 12 code, 1949 PA 300, MCL 257.79b.

13 Sec. 5529. (1) The department may assess an administrative
 14 fine of up to \$10,000.00, **subject to subsection (2)**, for each
 15 instance of violation and, if the violation continues, for each day
 16 of continued noncompliance, if the department, on the basis of
 17 available information, finds that the person has violated or is in
 18 violation of this part or a rule promulgated under this part, has
 19 failed to obtain a permit required under this part, violates an
 20 order under this part, or has failed to comply with the terms of a
 21 permit issued under this part. If a single event constitutes an
 22 instance of violation of any combination of this part, a rule
 23 promulgated under this part, or a permit issued or order entered
 24 under this part, the amount of the administrative fine for that
 25 single event shall not exceed \$10,000.00, **subject to subsection**
 26 **(2)**, for that violation. ~~The assessment of department may assess~~ an
 27 administrative fine ~~may be either as~~ a part of a compliance order
 28 or **by** a separate order issued by the department.

29 **(2) For a violation described in subsection (1) that is**

1 committed by a motor vehicle related business, the dollar amounts
 2 in subsection (1) are increased to \$25,000.00. For a violation
 3 described in subsection (1) that is committed by an automobile
 4 graveyard, the dollar amounts specified in subsection (1) are
 5 increased to \$50,000.00.

6 (3) ~~(2)~~ The authority of the department under this section is
 7 limited to matters ~~where~~ **in which** the total administrative fine
 8 sought does not exceed \$100,000.00 and the first alleged date of
 9 violation occurred within 12 months ~~prior to~~ **before** initiation of
 10 the administrative action. Except as may otherwise be provided by
 11 ~~applicable law~~, the department shall not condition the issuance of
 12 a permit on the payment of an administrative fine assessed pursuant
 13 to this section.

14 (4) ~~(3)~~ Within 28 days ~~of being assessed an administrative~~
 15 ~~fine from~~ **after** the department, ~~a~~ **assesses an administrative fine,**
 16 **the person on whom the fine is assessed** may file a petition with
 17 the department for review of ~~this~~ **the** fine. Review of the fine
 18 shall be conducted pursuant to the contested case procedures of
 19 **chapter 4 of** the administrative procedures act of 1969, ~~Act No. 306~~
 20 ~~of the Public Acts of 1969, being sections 24.271 to 24.287 of the~~
 21 ~~Michigan Compiled Laws. If issued as part of~~ **1969 PA 306, MCL**
 22 **24.271 to 24.288. If an administrative fine is assessed in a**
 23 consent order issued pursuant to section 5528, only the amount of
 24 the administrative fine and the alleged violation on which the fine
 25 is based are subject to the contested case procedures of ~~Act No.~~
 26 ~~306 of the Public Acts of 1969.~~ **chapter 4 of the administrative**
 27 **procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288.**

28 Sec. 5530. (1) The attorney general may commence a civil
 29 action against a person for appropriate relief, including

injunctive relief, and a civil fine as provided in subsection (2) for any of the following:

(a) ~~Violating~~ **A violation of** this part or a rule promulgated under this part.

(b) Failure to obtain a permit under this part.

(c) Failure to comply with the terms of a permit or an order issued under this part.

(d) Failure to pay an air quality fee or comply with a filing requirement under this part.

(e) Failure to comply with the inspection, entry, ~~and or~~ monitoring requirements of this part.

(f) A violation described in section 5518(2).

(2) In addition to any other relief authorized under this section, the court may impose a civil fine of not more than ~~\$10,000.00~~ **the following amount** for each instance of violation and, if the violation continues, for each day of continued violation:

(a) **Except as provided in subdivisions (b) and (c),** \$10,000.00.

(b) **If the violation is committed by a motor vehicle related business,** \$25,000.00.

(c) **If the violation is committed by an automobile graveyard,** \$50,000.00.

(3) In addition to other relief authorized under this section, the attorney general may, at the request of the department, file an action in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of ~~the~~ **this** state.

(4) In ~~issuing~~ a final order in an action brought ~~pursuant to~~ **under** this section, the court may award costs of litigation,

including, but not limited to, reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party if the court determines that ~~such an~~ **the** award is appropriate.

(5) A civil action ~~brought~~ under this section may be brought in **any of the following:**

(a) **The** county ~~in which~~ **where** the defendant is located, resides, or is doing business. ~~, or in the~~

(b) **The** circuit court for the county of Ingham. ~~, or in the~~

(c) **If the defendant is a corporation, the** county in which the registered office of ~~a defendant~~ **the** corporation is located. ~~, or in the~~

(d) **The** county where the violation occurred.

(6) General defenses and affirmative defenses ~~, that~~ may otherwise apply under state law may apply in an action brought under this section as determined to be appropriate by a court of competent jurisdiction.

(7) Fines imposed under this section shall be assessed for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

Sec. 11151. (1) If the department finds that a person is in violation of a permit ~~, or~~ license ~~, issued or~~ rule promulgated under this part ~~, or requirement~~ **in violation** of this part, including a corrective action requirement of this part, the department may issue an order requiring the person to comply with the permit, license, rule, or requirement of this part, including a corrective action requirement of this part. The attorney general or ~~a~~ **another** person may commence a civil action against ~~a person,~~ the department, ~~or~~ a health department certified under section 11145,

1 **or another person** for appropriate relief, including injunctive
 2 relief, for a violation of this part, including a corrective action
 3 requirement of this part, or a rule promulgated under this part. An
 4 action under this subsection may be brought in the circuit court
 5 for the county of Ingham or for the county in which the defendant
 6 is located, resides, or is doing business. The court has
 7 jurisdiction to restrain the violation and to require compliance.
 8 In addition to any other relief granted under this subsection, the
 9 court may impose a civil fine of not more than \$25,000.00, **or if**
 10 **the violation is committed by an automobile graveyard, not more**
 11 **than \$50,000.00**, for each instance of violation and, if the
 12 violation is continuous, for each day of continued noncompliance. A
 13 fine collected under this subsection shall be deposited in the
 14 general fund of ~~the~~**this** state.

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

1 violation and, if the violation is continuous, for each day of
 2 violation, or by imprisonment for not more than 2 years, or both.
 3 Additionally, **the court shall order** a person who is convicted of a
 4 violation under this subsection ~~shall be ordered to pay all costs~~
 5 of corrective action associated with the violation.

6 (3) ~~Any~~ **A** person who knowingly stores, treats, transports, or
 7 disposes of ~~any~~ hazardous waste in violation of subsection (2), ~~and~~
 8 ~~who knows at that time that he or she thereby places another person~~
 9 ~~in~~ **is aware or believes that his or her conduct is substantially**
 10 **certain to cause** imminent danger of death or serious bodily injury,
 11 ~~and if his or her~~ **whose** conduct in the circumstances manifests an
 12 unjustified and inexcusable disregard for human life ~~, or if his or~~
 13 ~~her conduct in the circumstances manifests an~~ extreme indifference
 14 ~~for to~~ human life, ~~upon conviction, is subject to~~ **is guilty of a**
 15 **felony punishable by** a fine of not more than \$250,000.00 or
 16 imprisonment for not more than 2 years, or both. ~~, except that any~~
 17 ~~person whose actions constitute~~ **However, if the person's conduct in**
 18 **the circumstances manifests** an extreme indifference ~~for to~~ human
 19 life, ~~upon conviction, is subject to~~ **the person is guilty of a**
 20 **felony punishable by** a fine of not more than \$250,000.00 or
 21 imprisonment for not more than 5 years, or both. A defendant that
 22 is not an individual and not a governmental entity, upon
 23 conviction, is subject to a fine of not more than \$1,000,000.00.
 24 Additionally, a person who is convicted of a violation under ~~this~~
 25 subsection shall be ordered to pay all costs of corrective action
 26 associated with the violation.

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

29 (a) His or her conduct, if he or she is aware of the nature of

1 his or her conduct.

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

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

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

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

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

19 (6) It is an affirmative defense to a prosecution under this
20 part that the conduct charged was consented to by the person
21 endangered and that the danger and conduct charged were reasonably
22 foreseeable hazards of either of the following:

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

24 (b) Medical treatment or professionally approved methods, ~~and~~
25 ~~if~~ the other person ~~had been~~ **was** made aware of the risks involved
26 ~~prior to~~ **before** giving consent.

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

29 ~~(8) For purposes of subsection (3), "serious bodily injury"~~

1 ~~means each of the following:~~

2 ~~(a) Bodily injury that involves a substantial risk of 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 bodily~~
7 ~~member, organ, or mental faculty.~~

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

21 (9) ~~(10)~~—The court, in ~~issuing~~ a final order in an action
22 brought under this part, may award costs of litigation, including
23 reasonable attorney and expert witness fees, to a party, if the
24 court determines that the award is appropriate.

25 (10) ~~(11)~~—A person who has an interest that is or may be
26 affected by a civil or administrative action commenced under this
27 part ~~has a right to~~ **may** intervene in that action.

28 (11) **As used in this section:**

29 (a) **"Automobile graveyard" means that term as defined in**

1 section 5501.

2 (b) "Serious bodily injury" means any of the following:

3 (i) Bodily injury that involves a substantial risk of death.

4 (ii) Unconsciousness.

5 (iii) Extreme physical pain.

6 (iv) Protracted and obvious disfigurement.

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

9 Sec. 12115. (1) The attorney general may commence a civil
10 action against a person in a court of competent jurisdiction for
11 appropriate relief, including injunctive relief for a violation of
12 this part ~~or~~ a registration or permit issued pursuant to this
13 part. The court has jurisdiction to restrain the violation and to
14 require compliance. In addition to any other relief granted under
15 this section, the court may impose a civil fine of not more than
16 ~~\$10,000.00~~ **the following amount** for each instance of violation and,
17 if the violation is continuous, for each day of continued
18 noncompliance:

19 (a) **Except as provided in subdivisions (b) and (c),**
20 **\$10,000.00.**

21 (b) **If the violation is committed by a motor vehicle related**
22 **business, as defined in section 5501, \$25,000.00.**

23 (c) **If the violation is committed by an automobile graveyard,**
24 **as defined in section 5501, \$50,000.00.**

25 (2) A fine collected under ~~this~~ subsection (1) shall be
26 deposited in the general fund.

27 (3) ~~(2)~~ The attorney general or ~~a~~ **another** person may bring a
28 civil action in a court of competent jurisdiction to recover the
29 full value of the damage done to the natural resources ~~that are~~

1 ~~damaged or destroyed of this state~~ and the costs of surveillance
 2 and enforcement **incurred** by ~~the this~~ state as a result of a
 3 violation of this part. The ~~damages and~~ costs collected under this
 4 section shall be deposited in the general fund. ~~However, if the~~
 5 ~~damages result from the impairment or destruction of the fish,~~
 6 ~~wildlife, or other natural resources of the state, the~~ **The** damages
 7 **collected** shall be deposited in the game and fish protection
 8 account of the Michigan conservation and recreation legacy fund
 9 ~~provided in~~ **established under** section 2010. The attorney general
 10 may, in addition, recover expenses incurred by the department to
 11 address and remedy a violation of this part that the department
 12 reasonably considered an imminent and substantial threat to the
 13 public health, safety, or welfare ~~or to the environment.~~

14 **(4)** ~~(3)~~ The court may award court costs and other expenses of
 15 litigation including attorney fees to a party who successfully
 16 brings an action ~~pursuant to~~ **under** this section or to a person who
 17 successfully defends against an action brought under this section
 18 that the court determines is frivolous.

19 **Sec. 16908e. (1) The department may request the attorney**
 20 **general to commence a civil action for appropriate relief,**
 21 **including a permanent or temporary injunction, for a violation of**
 22 **this part or a permit or order issued or rule promulgated under**
 23 **this part by a motor vehicle related business or automobile**
 24 **graveyard. An action under this subsection may be brought in the**
 25 **circuit court for the county of Ingham or for the county in which**
 26 **the defendant is located, resides, or is doing business. If**
 27 **requested by the defendant within 21 days after service of process,**
 28 **the court shall grant a change of venue to the circuit court for**
 29 **the county of Ingham or for the county in which the alleged**

1 violation occurred, is occurring, or, in the event of a threat of
2 violation, may occur. The court has jurisdiction to restrain the
3 violation and to require compliance. In addition to any other
4 relief granted under this subsection, the court shall impose a
5 civil fine of not more than the following amount:

6 (a) \$25,000.00 per day of violation if the violator is a motor
7 vehicle related business.

8 (b) \$50,000.00 per day of violation if the violator is an
9 automobile graveyard.

10 (2) In an action under this section, the court may award
11 reasonable attorney fees and costs to the prevailing party.

12 (3) As used in this section:

13 (a) "Automobile graveyard" means an automobile graveyard as
14 defined in section 5501.

15 (b) "Motor vehicle related business" means that term as
16 defined in section 5501.