

HOUSE BILL No. 5758

May 15, 1990, Introduced by Reps. Sikkema, Emmons, Fitzgerald, Bandstra, Crandall, Sparks, Gilmer, Bartnik, Martin, Bennett, Trim, Krause, Dolan, Hoekman, Munsell, Strand, Camp and Wartner and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend section 10 of Act No. 245 of the Public Acts of 1929, entitled as amended

"An act to regulate, protect, and conserve the water resources of the state, to provide for the control over the pollution of any waters of the state and the Great Lakes, to provide for the control over the alteration of the watercourses and the floodplains of all rivers and streams; to create a water resources commission; to prescribe the powers and duties of certain state agencies and officials; to require the registration of manufacturing products, production materials, and waste products where certain wastes are discharged; to require permits to regulate the discharge or storage of any substance which may affect the quality of the waters of the state and to establish restrictions to assure compliance with applicable state standards and to authorize the establishment of permit restrictions and programs to assure compliance with applicable federal law and regulations; to prohibit the pollution of any waters of the state and the Great Lakes; to prohibit the obstruction of the floodways of the rivers and streams of the state; to designate the department of natural resources as the state agency to cooperate and negotiate with other governments and agencies in matters concerning the water resources of the state; and to provide penalties and remedies for the violation of this act,"

as amended by Act No. 19 of the Public Acts of 1990, being section 323.10 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 10 of Act No. 245 of the Public Acts of
2 1929, as amended by Act No. 19 of the Public Acts of 1990, being
3 section 323.10 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 10. (1) The department or the commission may request
6 the attorney general to commence a civil action for appropriate
7 relief, including a permanent or temporary injunction, for a vio-
8 lation of this act or the provisions of a permit, order, rule, or
9 stipulation of the department or the commission. An action under
10 this subsection may be brought in the circuit court for the
11 county of Ingham or for the county in which the defendant is
12 located, resides, or is doing business. The court has jurisdic-
13 tion to restrain the violation and to require compliance. In
14 addition to any other relief granted under this subsection, the
15 court shall impose a civil fine of not less than \$2,500.00 and
16 may award reasonable attorney fees and costs to the prevailing
17 party. However, the maximum fine imposed by the court shall be
18 not more than \$25,000.00 per day of violation. IN ADDITION TO A
19 FINE, THE ATTORNEY GENERAL MAY FILE A CIVIL SUIT TO RECOVER THE
20 FULL VALUE OF THE INJURIES DONE TO THE NATURAL RESOURCES OF THE
21 STATE AND THE COSTS OF SURVEILLANCE AND ENFORCEMENT BY THE STATE
22 RESULTING FROM THE VIOLATION.

23 (2) A person who at the time of the violation, knew or
24 should have known that he or she discharged a substance contrary
25 to this act, or contrary to the provisions of a permit, order,
26 rule, or stipulation of the department or the commission, or who

1 intentionally makes a false statement, representation, or
2 certification in an application for ~~—~~ or form pertaining to a
3 permit, or in a notice or report required by the terms and condi-
4 tions of an issued permit, or who intentionally renders inaccu-
5 rate a monitoring device or record required to be maintained by
6 the commission, is guilty of a felony and shall be fined not less
7 than \$2,500.00 or more than \$25,000.00 for each violation. The
8 court may impose an additional fine of not more than \$25,000.00
9 for each day during which ~~the~~ AN unlawful discharge occurred.
10 If the conviction is for a violation committed after a first con-
11 viction of the person under this subsection, the court shall
12 impose a fine of not less than \$25,000.00 per day and not more
13 than \$50,000.00 per day of violation. Upon conviction, in addi-
14 tion to a fine, the court in its discretion may sentence the
15 defendant to imprisonment for not more than 2 years or impose
16 probation upon ~~a person for a violation of this act~~ THE
17 DEFENDANT. With the exception of the issuance of criminal com-
18 plaints, THE issuance of warrants, and the holding of an arraign-
19 ment, the circuit court for the county in which the violation
20 occurred has exclusive jurisdiction. However, the person shall
21 not be subject to the penalties of this subsection if the dis-
22 charge of the effluent is in conformance with and obedient to a
23 rule, order, or permit of the commission. ~~In addition to a~~
24 ~~fine, the attorney general may file a civil suit in a court of~~
25 ~~competent jurisdiction to recover the full value of the injuries~~
26 ~~done to the natural resources of the state and the costs of~~

1 ~~surveillance and enforcement by the state resulting from the~~
2 ~~violation.~~

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

8 (4) Upon a finding by the court that the ~~action~~ ACTIONS of
9 a criminal defendant pose or posed a substantial endangerment to
10 public health, safety, or welfare, the court shall impose, in
11 addition to the penalties set forth in subsection (2), a fine of
12 not less than \$1,000,000.00 and ~~, in addition to a fine,~~ a sen-
13 tence of 5 years' imprisonment.

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

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

22 (b) The defendant acted in gross disregard of the standard
23 of care which any reasonable person should observe in similar
24 circumstances.

25 (6) Knowledge possessed by a person other than the defendant
26 under subsection (5) ~~may be~~ IS attributable to the defendant if

1 the defendant took affirmative steps to shield himself or herself
2 from the relevant information.

3 (7) ~~Any~~ ALL OF THE FOLLOWING APPLY TO A fine or other
4 award ordered paid pursuant to this section: ~~shall do both of~~
5 ~~the following.~~

6 (a) ~~Be~~ IT SHALL BE payable to the state of Michigan. ~~and~~
7 ~~credited to the general fund.~~

8 (b) ~~Constitute~~ IT CONSTITUTES a lien on any property, of
9 any nature or kind, owned by the defendant.

10 (C) IF THE FINE OR AWARD IS ORDERED PAID PURSUANT TO A CIVIL
11 ACTION, IT SHALL BE DEPOSITED INTO THE ENVIRONMENTAL CLEANUP
12 REVOLVING LOAN FUND CREATED IN SECTION 9E OF THE ENVIRONMENTAL
13 RESPONSE ACT, ACT NO. 307 OF THE PUBLIC ACTS OF 1982.

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

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

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

1 Section 2. This amendatory act shall not take effect unless
2 Senate Bill No. ___ or House Bill No. 5758 (request no. 05187'90)
3 of the 85th Legislature is enacted into law.