

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 977

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 3115 (MCL 324.3115), as amended by 2004 PA
91.

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~~
5 ~~stipulation of the department—~~ **or order issued or rule**
6 **promulgated under this part.** An action under this subsection may
7 be brought in the circuit court for the county of Ingham or for
8 the county in which the defendant is located, resides, or is
9 doing business. If requested by the defendant within 21 days
10 after service of process, the court shall grant a change of venue

1 to the circuit court for the county of Ingham or for the county
2 in which the alleged violation occurred, is occurring, or, in the
3 event of a threat of violation, will occur. The court has
4 jurisdiction to restrain the violation and to require
5 compliance. In addition to any other relief granted under this
6 subsection, the court, **except as otherwise provided in this**
7 **subsection**, shall impose a civil fine of not less than \$2,500.00
8 and **the court** may award reasonable attorney fees and costs to the
9 prevailing party. However, ~~the~~ **all of the following apply:**

10 (a) **The** maximum fine imposed by the court shall be not more
11 than \$25,000.00 per day of violation.

12 (b) **For a failure to report a release to the department or**
13 **to the primary public safety answering point under section**
14 **3111b(1), the court shall impose a civil fine of not more than**
15 **\$2,500.00.**

16 (c) **For a failure to report a release to the local health**
17 **department under section 3111b(2), the court shall impose a civil**
18 **fine of not more than \$500.00.**

19 (2) A person who at the time of the violation knew or should
20 have known that he or she discharged a substance contrary to this
21 part, or contrary to a permit ~~—, order, rule, or stipulation of~~
22 ~~the department~~ **or order issued or rule promulgated under this**
23 **part**, or who intentionally makes a false statement,
24 representation, or certification in an application for or form
25 pertaining to a permit or in a notice or report required by the
26 terms and conditions of an issued permit, or who intentionally
27 renders inaccurate a monitoring device or record required to be

1 maintained by the department, is guilty of a felony and shall be
2 fined not less than \$2,500.00 or more than \$25,000.00 for each
3 violation. The court may impose an additional fine of not more
4 than \$25,000.00 for each day during which the unlawful discharge
5 occurred. If the conviction is for a violation committed after a
6 first conviction of the person under this subsection, the court
7 shall impose a fine of not less than \$25,000.00 per day and not
8 more than \$50,000.00 per day of violation. Upon conviction, in
9 addition to a fine, the court in its discretion may sentence the
10 defendant to imprisonment for not more than 2 years or impose
11 probation upon a person for a violation of this part. With the
12 exception of the issuance of criminal complaints, issuance of
13 warrants, and the holding of an arraignment, the circuit court
14 for the county in which the violation occurred has exclusive
15 jurisdiction. However, the person shall not be subject to the
16 penalties of this subsection if the discharge of the effluent is
17 in conformance with and obedient to a rule, order, or permit of
18 the department. In addition to a fine, the attorney general may
19 file a civil suit in a court of competent jurisdiction to recover
20 the full value of the injuries done to the natural resources of
21 the state and the costs of surveillance and enforcement by the
22 state resulting from the violation.

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

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

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

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

16 (b) The defendant acted in gross disregard of the standard of
17 care that any reasonable person should observe in similar
18 circumstances.

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

23 (7) A civil fine or other award ordered paid pursuant to this
24 section shall do both of the following:

25 (a) Be payable to the state of Michigan and credited to the
26 general fund.

27 (b) Constitute a lien on any property, of any nature or kind,

1 owned by the defendant.

2 (8) A lien under subsection (7)(b) shall take effect and have
3 priority over all other liens and encumbrances except those filed
4 or recorded prior to the date of judgment only if notice of the
5 lien is filed or recorded as required by state or federal law.

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

10 (10) In addition to any other method of collection, any fine
11 or other award ordered paid may be recovered by right of setoff
12 to any debt owed to the defendant by the state of Michigan,
13 including the right to a refund of income taxes paid.

14 Enacting section 1. This amendatory act does not take
15 effect unless House Bill No. 5586 of the 92nd Legislature is
16 enacted into law.