

Act No. 143  
Public Acts of 2004  
Approved by the Governor  
June 15, 2004  
Filed with the Secretary of State  
June 15, 2004  
EFFECTIVE DATE: June 15, 2004

**STATE OF MICHIGAN  
92ND LEGISLATURE  
REGULAR SESSION OF 2004**

Introduced by Senators Gilbert, Patterson, Switalski, McManus, Allen, Olshove, Kuipers, Van Woerkom, Birkholz, Goschka and Sanborn

**ENROLLED SENATE BILL No. 977**

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 3115 (MCL 324.3115), as amended by 2004 PA 91.

*The People of the State of Michigan enact:*

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

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

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

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

(2) A person who at the time of the violation knew or should have known that he or she discharged a substance contrary to this part, or contrary to a permit or order issued or rule promulgated under this part, or who intentionally makes a false statement, representation, or certification in an application for or form pertaining to a permit or in a notice or report required by the terms and conditions of an issued permit, or who intentionally renders inaccurate a monitoring device or record required to be maintained by the department, is guilty of a felony and shall be fined not less than \$2,500.00 or more than \$25,000.00 for each violation. The court may impose an additional fine of not more than \$25,000.00 for each day during which the unlawful discharge occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than \$25,000.00 per day and not more than \$50,000.00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence

the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction. However, the person shall not be subject to the penalties of this subsection if the discharge of the effluent is in conformance with and obedient to 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 state and the costs of surveillance and enforcement by the state resulting from 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' imprisonment.

(5) To find a defendant civilly or criminally liable for substantial endangerment under subsection (3) or (4), the court shall 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 reasonable person should observe in similar circumstances.

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

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

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

(b) Constitute a lien on any property, of any nature or kind, owned by the defendant.

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

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

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

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

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Ray E. Randall*

Clerk of the House of Representatives

Approved .....

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Governor