

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

333.13738 Order requiring compliance or remedial action; emergency order; civil action; venue; civil fine; violation as misdemeanor or felony; penalty; “state of mind”; “placing person in imminent danger of death or serious bodily injury”; affirmative defense; “serious bodily injury”; action for damage; costs of litigation; intervention.

Sec. 13738.

(1) If the director finds that a person is in violation of this part, a rule promulgated under this part, or a permit or license issued under this part, the director may issue an order requiring the person to comply with this part, rule, permit, or license. An order issued pursuant to this section may require remedial actions considered necessary by the department to correct violations. An order issued by the director pursuant to this section may be an emergency order as authorized by section 2251 upon a finding and determination that an imminent danger to the health or lives of individuals exists as a result of conditions associated with the generation, processing, collecting, management, transporting, handling, disposal, or possession of waste. The attorney general may commence a civil action against a person for appropriate relief, including injunctive relief for a violation of this part or a 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. In addition to any other relief granted under this subsection, the court may impose a civil fine of not more than \$25,000.00 for each instance of violation and, if the violation is continuous, for each day of continued noncompliance. A fine collected under this subsection shall be forwarded to the state treasurer for deposit in the general fund.

(2) A person who possesses, generates, processes, collects, transports, or disposes of waste in violation of this part, or contrary to a license, permit, order, or rule issued or promulgated under this part, or who makes a false statement, representation, or certification in an application for, or form pertaining to, a permit or license, is guilty of a misdemeanor, punishable by a fine of not more than \$25,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or imprisonment for not more than 1 year, or both. If the conviction is for a violation committed after a first conviction of the person under this subsection, the person is guilty of a misdemeanor, punishable by a fine of not more than \$50,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or by imprisonment for not more than 5 years, or both.

(3) Any person who knowingly possesses, generates, processes, collects, transports, or disposes of waste in violation of subsection (2) and who knows at that time that he or she thereby places another person in imminent danger of death or serious bodily injury, and if his or her conduct in the circumstances manifests an unjustified and inexcusable disregard for human life, or if his or her conduct in the circumstances manifests an extreme indifference for human life, is guilty of a misdemeanor, punishable by a fine of not more than \$250,000.00 or imprisonment for not more than 2 years, or both, except that any person whose actions constitute an extreme indifference for human life is guilty of a felony punishable by a fine of not less than \$250,000.00 and not more than \$500,000.00 and imprisonment for not less than 5 years and not more than 20 years. A defendant that is not an individual and not a governmental entity shall be subject, upon conviction, to a fine of not more than \$1,000,000.00.

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

- (a) His or her conduct, if he or she is aware of the nature of his or her conduct.
- (b) An existing circumstance, if he or she is aware or believes that the circumstance exists.
- (c) A result of his or her conduct, if he or she is aware or believes that his or her conduct is substantially certain to cause danger of death or serious bodily injury.

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

- (a) The person is responsible only for actual awareness or actual belief that he or she possessed.
- (b) Knowledge possessed by a person other than the defendant but not by the defendant himself or herself may not be attributed to the defendant. However, in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

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

- (a) An occupation, business, profession, or through the undertaking of an inspection of the disposal site as a representative of the local monitoring committee of the host site community.
- (b) Medical treatment or professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

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

(8) For purposes of subsection (3), "serious bodily injury" means each of the following:

- (a) Bodily injury which involves a substantial risk of death.
- (b) Unconsciousness.
- (c) Extreme physical pain.
- (d) Protracted and obvious disfigurement.
- (e) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(9) In addition to a fine, the attorney general may bring an action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources of this state and the costs of surveillance and enforcement by the state resulting from the violation. The damages and cost collected under this subsection shall be forwarded to the state treasurer for deposit in the general fund.

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

(11) A person who has an interest which is or may be affected by a civil or administrative action commenced under this part shall have a right to intervene in that action.

History: Add. 1987, Act 203, Imd. Eff. Dec. 22, 1987

Compiler's Notes: For transfer of powers and duties of radioactive materials program from department of health and human services to department of health and human services, see E.R.O. No. 2017-3, compiled at MCL 333.26254.

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