

Criminal Penalties

Section 324.XXXXX Criminal Penalties; fraud

- (1) Beginning on **[the effective date of the act]**, a person, who makes or submits or causes to be made or submitted, either directly or indirectly, a statement, representation, plan, report, confirmation, certification, proposal, or other information or other document filed or required to be maintained under this part and rules promulgated under this part, knowing that the statement, report, confirmation, certification, proposal, or other information or other document filed or required to be maintained is false or misleading, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$50,000.00, or both. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.
- (2) A person who makes or submits or causes to be made or submitted, either directly or indirectly, a statement, representation, plan, report, confirmation, certification, proposal, or other information or other document filed or required to be maintained under this part and rules promulgated under this part, knowing that the statement, representation, plan, report, confirmation, certification, proposal, or other information or other document filed or required to be maintained is false or misleading, is subject to a civil fine of \$50,000.00 for each submission. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.
- (3) A person who does any of the following is guilty of a felony and shall be fined not less than \$2,500.00 or more than \$50,000.00 for each violation:
 - (a) Knowingly releases a hazardous substance or causes a release contrary to applicable federal, state, or local requirements or contrary to any permit or license held by that person, if that person knew or should have known that the release could cause personal injury or property damage.
 - (b) Intentionally damages or renders inaccurate any monitoring device or permanent marker required to be maintained under this part or a rule promulgated under this part.
 - (c) Intentionally destroys any record required to be maintained under this part or rule promulgated under this part.
 - (d) Knowingly fails to comply with the provisions of an environmental covenant existing at a facility when obligated to do so, and that failure results in exposure to a hazardous substance at concentrations or under the conditions that pose an acute risk.
 - (e) Intentionally alters, removes or damages an exposure barrier designed to prevent exposures to hazardous substances, including, but not limited to, a physical barrier or written instrument and that action results in exposure to a hazardous substance at concentrations or under the conditions that pose an acute risk.
 - (f) Intentionally fails to disclose to a purchaser, lessee, easement holder or vendee that real property is a facility subject to due care provisions [at the point of sale, lease, easement grant, or vendee contract] in accordance with section xxxxx [*Disclosure and Notice Requirements*] and that failure to disclose results in exposure to a hazardous substance at concentrations or under the conditions that pose an acute risk.
- (4) In addition to a fine imposed under subsection (1) or (3), the court may impose an additional fine of not more than \$25,000.00 for each day during which the release or

violation continues. 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 and not more than \$50,000.00 per day of violation. Upon conviction under subsection (3), 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.

- (5) Upon a finding by the court that the action of a criminal defendant prosecuted under this section poses or posed a substantial endangerment to public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsections (3) and (4), a fine of not less than \$1,000,000.00; and, in addition to a fine, a sentence of 5 years imprisonment.
- (6) To find a defendant criminally liable for substantial endangerment under subsection (5), 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 has 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 would observe in similar circumstances.
- (7) As used in this section, "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- (8) Knowledge possessed by a person other than the defendant under subsection (5) may be attributed to the defendant if the defendant took affirmative steps to shield himself or herself from the relevant information.
- (9) The attorney general or county prosecutor may conduct an investigation of an alleged violation of this section and bring an action for a violation of this section.
- (10) If the attorney general or county prosecutor has reasonable cause to believe that a person has information or is in possession, custody, or control of any documents or records, however stored or embodied, or tangible object relevant to an investigation for violation of this part, the attorney general or county prosecutor may, before bringing any action, make an *ex parte* request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath or to produce the documents, records, or objects for inspection and copying, or both. Service may be accomplished by any means described in the Michigan court rules. Requests made by the attorney general may be brought in Ingham county.
- (11) If a person objects to or otherwise fails to comply with a subpoena served under subsection (10), an action may be brought in district court to enforce the demand. Actions filed by the attorney general may be brought in Ingham county.

- (12) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses to provide or objects to providing information, documents, records, or objects sought pursuant to this section. If the judge is satisfied that it is in the interest of justice that immunity be granted, he or she shall enter an order granting immunity to the person, and requiring them to appear and be examined under oath or to produce the documents, records, or objects for inspection and copying, or both.
- (13) A person who fails to comply with a subpoena issued pursuant to subsection (10) or a requirement to appear and be examined pursuant to subsection (12) is subject to a civil fine of not more than \$25,000.00 for each day of continued noncompliance.
- (14) This section does not preclude prosecutions under the laws of this state including, but not limited to, section 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422 of the Michigan Compiled Laws.
- (15) All fines collected pursuant to this section shall be apportioned in the following manner:
 - (a) Fifty percent shall be deposited in the fund.
 - (b) Twenty-five percent shall be paid to the office of the county prosecutor or attorney general, whichever office brought the action.
 - (c) Twenty-five percent shall be paid to a local police department or sheriff's office, or a city or county health department, if investigation by such office or department led to the bringing of the action. If more than 1 office or department is eligible for payment under this subsection, division of payment shall be on an equal basis. If there is not a local office or department entitled to payment under this subsection, the money shall be deposited into the fund.