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AB-1842 Water: pollution: fines. (2015-2016)

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Assembly Bill No. 1842

CHAPTER 349

An act to amend Section 5650.1 of the Fish and Game Code, and to amend Section 8670.61 of the Government Code, relating to water pollution.

[Approved by Governor September 14, 2016. Filed with Secretary of State September 14, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1842, Levine. Water: pollution: fines.

Existing law imposes a maximum civil penalty of \$25,000 on a person who discharges various pollutants or other designated materials into the waters of the state.

This bill would impose an additional civil penalty of not more than \$10 for each gallon or pound of material discharged. The bill would require that the civil penalty be reduced for every gallon or pound of the illegally discharged material that is recovered and properly disposed of by the responsible party.

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act establishes various civil penalties for conduct in connection with the intentional or negligent discharging of oil into waters of the state. Existing law requires civil and criminal penalties provided in the act to be separate from, and in addition to, and to not supersede or limit, any and all other remedies, civil or criminal.

This bill would prohibit a person from being subject to both a civil penalty described above and a civil penalty imposed pursuant to the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act for the same act or failure to act.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5650.1 of the Fish and Game Code is amended to read:

5650.1. (a) A person who violates Section 5650 is subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation.

(b) The civil penalty imposed for each separate violation pursuant to this section is separate, and in addition to, any other civil penalty imposed for a separate violation pursuant to this section or any other provision of law, except as provided in subdivision (j).

(c) In determining the amount of a civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, the court shall consider the degree of toxicity and volume of the discharge, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, the effect of any civil penalty on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and any other matters the court determines justice may require.

(d) Every civil action brought under this section shall be brought by the Attorney General upon complaint by the department, or by the district attorney or city attorney in the name of the people of the State of California, and any actions relating to the same violation may be joined or consolidated.

(e) In a civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding that irreparable damage will occur if the temporary restraining order, preliminary injunction, or permanent injunction is not issued, or that the remedy at law is inadequate.

(f) After the party seeking the injunction has met its burden of proof, the court shall determine whether to issue a temporary restraining order, preliminary injunction, or permanent injunction without requiring the defendant to prove that it will suffer grave or irreparable harm. The court shall make the determination whether to issue a temporary restraining order, preliminary injunction, or permanent injunction by taking into consideration, among other things, the nature, circumstance, extent, and gravity of the violation, the quantity and characteristics of the substance or material involved, the extent of environmental harm caused by the violation, measures taken by the defendant to remedy the violation, the relative likelihood that the material or substance involved may pass into waters of the state, and the harm likely to be caused to the defendant.

(g) The court, to the maximum extent possible, shall tailor a temporary restraining order, preliminary injunction, or permanent injunction narrowly to address the violation in a manner that will otherwise allow the defendant to continue business operations in a lawful manner.

(h) All civil penalties collected pursuant to this section shall not be considered fines or forfeitures as defined in Section 13003 and shall be apportioned in the following manner:

(1) Fifty percent shall be distributed to the county treasurer of the county in which the action is prosecuted. Amounts paid to the county treasurer shall be deposited in the county fish and wildlife propagation fund established pursuant to Section 13100.

(2) Fifty percent shall be distributed to the department for deposit in the Fish and Game Preservation Fund. These funds may be expended to cover the costs of legal actions or for any other law enforcement purpose consistent with Section 9 of Article XVI of the California Constitution.

(i) Except as provided in subdivision (j), in addition to any other penalty provided by law, a person who violates Section 5650 is subject to a civil penalty of not more than ten dollars (\$10) for each gallon or pound of material discharged. The total amount of the civil penalty shall be reduced for every gallon or pound of the illegally discharged material that is recovered and properly disposed of by the responsible party.

(j) A person shall not be subject to a civil penalty imposed under this section and to a civil penalty imposed pursuant to Article 9 (commencing with Section 8670.57) of Chapter 7.4 of Division 1 of Title 2 of the Government Code for the same act or failure to act.

SEC. 2. Section 8670.61 of the Government Code is amended to read:

8670.61. The civil and criminal penalties provided in this chapter and Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be separate from, and in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, except as provided in subdivision (j) of Section 5650.1 of the Fish and Game Code.