

SENATE BILL 393

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2003 Regular Session
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By: **Senators Pinsky, Britt, Conway, Frosh, Gladden, Grosfeld, Kelley, and Teitelbaum**

Introduced and read first time: January 31, 2003
Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 17, 2003

CHAPTER _____

1 AN ACT concerning

2 **Sediment Control, Stormwater Management, and Wetlands, ~~and Water~~**
3 **~~Pollution Control Programs - Violations - Criminal and Civil Penalties~~**

4 FOR the purpose of altering the amounts of certain criminal penalties applicable to
5 certain sediment control, stormwater management, and tidal ~~and nontidal~~
6 wetlands program violations; authorizing certain courts to order restoration of
7 certain areas in the event of certain criminal violations of certain sediment
8 control and stormwater management programs; altering the amounts of certain
9 civil penalties applicable to certain sediment ~~control, stormwater management,~~
10 ~~nontidal wetlands, and water pollution control program~~ control and stormwater
11 management violations; repealing the requirement of a certain proof of costs
12 applicable to certain civil actions instituted by certain government agencies in
13 the event of certain sediment control program violations; instituting a certain
14 civil penalty applicable to certain tidal wetlands program violations; authorizing
15 the court to consider certain costs in imposing a certain penalty; authorizing the
16 court to consider certain factors in imposing a certain penalty; and generally
17 relating to enforcement of the sediment control, stormwater management,
18 ~~wetlands, and water pollution control~~ and wetlands programs.

19 BY repealing and reenacting, with amendments,
20 Article - Environment
21 Section 4-116(a) and (c), 4-215(a) and (c), ~~5-911(d) and (e), 9-342(a),~~ 16-501(a)
22 and (b), and 16-502(a)
23 Annotated Code of Maryland
24 (1996 Replacement Volume and 2002 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Environment**

4 4-116.

5 (a) (1) Any person who violates any provision of this subtitle is guilty of a
6 misdemeanor, and upon conviction in a court of competent jurisdiction is subject to a
7 fine not exceeding [\$5,000] ~~\$15,000~~ \$10,000 or imprisonment not exceeding one year or
8 both for each violation with costs imposed in the discretion of the court.

9 (2) THE COURT MAY ORDER THE PERSON TO RESTORE THE AREA
10 UNLAWFULLY DISTURBED.

11 (3) Each day upon which the violation occurs constitutes a separate
12 offense.

13 (c) (1) In addition to any other sanction under this subtitle, [a person is
14 liable for a civil penalty as provided in this subsection if the person:

15 (i) Clears, grades, transports, or otherwise disturbs land without
16 first installing erosion and sediment controls in accordance with an approved plan; or

17 (ii) Fails to establish erosion and sediment controls in accordance
18 with an approved plan within the time specified by a State, county, or municipal order
19 or to maintain those erosion and sediment controls.

20 (2) The appropriate county, municipal, or State agency may recover a
21 civil penalty under paragraph (1) of this subsection in a civil action in an amount
22 equal to double the cost of:

23 (i) The installation of erosion and sediment controls in accordance
24 with an approved plan;

25 (ii) Maintaining erosion and sediment controls in accordance with
26 an approved plan; and

27 (iii) The permanent restoration of the disturbed land to a stable
28 condition.

29 (3) The appropriate county, municipal, or State agency may recover a
30 civil penalty under paragraph (1) of this subsection on proof of costs as specified in
31 paragraph (2) of this subsection, without the necessity of proving that the agency
32 performed work or incurred expenses. However, if any person responsible has made
33 the required corrections within the time specified by a State, county, or municipal
34 order, the appropriate State, county, or municipal agency may recover a civil penalty
35 under this subsection in an amount equal to not more than 50 percent of the costs
36 specified in paragraph (2) of this subsection] THE APPROPRIATE STATE, COUNTY, OR

1 MUNICIPAL AGENCY MAY BRING A CIVIL ACTION AGAINST A PERSON FOR A
2 VIOLATION OF THIS SUBTITLE.

3 (2) (I) THE ACTION MAY SEEK THE IMPOSITION OF A CIVIL PENALTY
4 UP TO ~~\$15,000~~ \$10,000 FOR EACH VIOLATION.

5 (II) IN IMPOSING A PENALTY UNDER THIS PARAGRAPH, THE COURT
6 MAY CONSIDER THE COST OF RESTORING THE AREA UNLAWFULLY DISTURBED.

7 [(4)] (3) [Any county, municipal, or] A State, COUNTY, OR MUNICIPAL
8 agency that recovers penalties in accordance with this subtitle shall deposit them in a
9 special fund, to be used solely for:

10 (i) Correcting to the extent possible the failure to implement or
11 maintain erosion and sediment controls; and

12 (ii) Administration of the sediment control program.

13 4-215.

14 (a) (1) Any person who violates any provision of this subtitle or any
15 regulation or stormwater management plan adopted or approved under this subtitle
16 is guilty of a misdemeanor and upon conviction in a court of competent jurisdiction is
17 subject to a fine not exceeding [\$5,000] ~~\$15,000~~ \$10,000 or imprisonment not exceeding
18 1 year or both for each violation with costs imposed in the discretion of the court.

19 (2) THE COURT MAY ORDER THE PERSON TO RESTORE THE AREA
20 UNLAWFULLY DISTURBED.

21 (3) Each day upon which the violation occurs constitutes a separate
22 offense.

23 (c) (1) In addition to any other sanction under this subtitle, the Department
24 or the Department of Natural Resources, as appropriate, or a political subdivision
25 may bring a civil action against any person for any violation of this subtitle or any
26 regulation or stormwater management plan adopted or approved under this subtitle.

27 (2) The action may seek the imposition of a civil penalty of not more than
28 ~~[\$10,000]~~ ~~\$15,000~~ against the person, an injunction to prohibit the person from
29 continuing the violation or both.

30 ~~5-911.~~

31 ~~(d) (1) A person who violates any provision of this subtitle or any regulation,~~
32 ~~order, or permit under this subtitle is liable for a penalty not exceeding [\$10,000]~~
33 ~~\$15,000, which may be recovered in a civil action brought by the Department.~~

34 ~~(2) Each day a violation continues is a separate violation under this~~
35 ~~subsection.~~

1 ~~[(2)]~~ (3) The court may issue an injunction requiring the person to cease
2 the violation and restore the area unlawfully disturbed.

3 (e) (1) A person who violates any provision of or fails to perform any duty
4 imposed by this subtitle or by a regulation, order, or permit under this subtitle is
5 guilty of a misdemeanor and on conviction is subject to:

6 (i) For a first offense, a fine not exceeding ~~[\$10,000]~~ \$15,000; or

7 (ii) For a second or subsequent offense, a fine not exceeding
8 ~~[\$25,000]~~ \$30,000.

9 (2) The court may order the person to restore the area unlawfully
10 disturbed.

11 ~~9-342.~~

12 (a) (1) In addition to being subject to an injunctive action under this
13 subtitle, a person who violates any provision of this subtitle or of any rule, regulation,
14 order, or permit adopted or issued under this subtitle is liable to a civil penalty not
15 exceeding ~~[\$10,000]~~ \$15,000, to be collected in a civil action brought by the
16 Department.

17 (2) Each day a violation occurs is a separate violation under this
18 subsection.

19 16-501.

20 (a) Any person who violates any provision of this title is guilty of a
21 misdemeanor. Unless another penalty is specifically provided elsewhere in this title,
22 the person, upon conviction, is subject to a fine not exceeding ~~[\$500]~~ ~~\$15,000~~ \$10,000,
23 with costs imposed in the discretion of the court.

24 (b) Any person found guilty of a second or subsequent violation of any
25 provision of this title, unless another penalty is specifically provided elsewhere in this
26 title, is subject to a fine not exceeding ~~[\$1,000]~~ ~~\$30,000~~ \$25,000, or imprisonment not
27 exceeding 1 year, or both with costs imposed in the discretion of the court. For the
28 purpose of this subsection, a second or subsequent violation is a violation which has
29 occurred within 2 years of any prior violation of this title.

30 16-502.

31 (a) (1) [In lieu of the State prosecuting a criminal action under any
32 provision of this title, the Attorney General may bring a civil action in the circuit
33 court against any] A person who violates any provision of this title or any regulation,
34 permit, license, or order issued under this title SHALL BE LIABLE FOR A PENALTY NOT
35 EXCEEDING ~~\$15,000~~ \$10,000, WHICH MAY BE RECOVERED IN A CIVIL ACTION.

1 (2) IN IMPOSING A PENALTY UNDER THIS SUBSECTION, THE COURT MAY
2 CONSIDER THE FACTORS IN § 9-342(B)(2)(II) OF THIS ARTICLE AND ANY OTHER
3 RELEVANT FACTORS.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
5 effect October 1, 2003.