

ASSEMBLY BILL

No. 1842

Introduced by Assembly Member Levine

February 9, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1842, as introduced, 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 polluting 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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5650.1 of the Fish and Game Code is
2 amended to read:
3 5650.1. (a) ~~Every~~A person who violates Section 5650 is
4 subject to a civil penalty of not more than twenty-five thousand
5 dollars (\$25,000) for each violation.
6 (b) The civil penalty imposed for each separate violation
7 pursuant to this section is separate, and in addition to, any other

1 civil penalty imposed for a separate violation pursuant to this
2 section or any other provision of law.

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

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

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

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

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

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

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

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

18 (i) *In addition to any other penalty provided by law, a person*
19 *who violates Section 5650 is subject to a civil penalty of not more*
20 *than ten dollars (\$10) for each gallon or pound of polluting*
21 *material discharged. The total amount of the civil penalty shall*
22 *be reduced for every gallon or pound of the illegally discharged*
23 *material that is recovered and properly disposed of by the*
24 *responsible party.*