

AMENDED IN ASSEMBLY APRIL 27, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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, *and to amend Section 8670.61 of the Government Code*, relating to water pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1842, as amended, 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.

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 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.
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) A person who violates Section 5650 is subject to
4 a civil penalty of not more than twenty-five thousand dollars
5 (\$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
8 civil penalty imposed for a separate violation pursuant to this
9 section or any other provision of ~~law~~: *law, except as provided in*
10 *subdivision (j)*.
- 11 (c) In determining the amount of a civil penalty imposed
12 pursuant to this section, the court shall take into consideration all
13 relevant circumstances, including, but not limited to, the nature,
14 circumstance, extent, and gravity of the violation. In making this
15 determination, the court shall consider the degree of toxicity and
16 volume of the discharge, the extent of harm caused by the violation,
17 whether the effects of the violation may be reversed or mitigated,
18 and with respect to the defendant, the ability to pay, the effect of
19 any civil penalty on the ability to continue in business, any
20 voluntary cleanup efforts undertaken, any prior history of
21 violations, the gravity of the behavior, the economic benefit, if
22 any, resulting from the violation, and any other matters the court
23 determines justice may require.
- 24 (d) Every civil action brought under this section shall be brought
25 by the Attorney General upon complaint by the department, or by
26 the district attorney or city attorney in the name of the people of
27 the State of California, and any actions relating to the same
28 violation may be joined or consolidated.
- 29 (e) In a civil action brought pursuant to this chapter in which a
30 temporary restraining order, preliminary injunction, or permanent
31 injunction is sought, it is not necessary to allege or prove at any
32 stage of the proceeding that irreparable damage will occur if the
33 temporary restraining order, preliminary injunction, or permanent
34 injunction is not issued, or that the remedy at law is inadequate.

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

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

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

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

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

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

39 (j) A person shall not be subject to a civil penalty imposed under
40 this section and to a civil penalty imposed pursuant to Article 9

1 *(commencing with Section 8670.57) of Chapter 7.4 of Division 1*
2 *of Title 2 of the Government Code for the same act or failure to*
3 *act.*

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

6 8670.61. The civil and criminal penalties provided in this
7 chapter and Division 7.8 (commencing with Section 8750) of the
8 Public Resources Code shall be separate and in addition to, and
9 do not supersede or limit, any and all other remedies, civil or
10 ~~criminal~~. *criminal, except as provided in subdivision (j) of Section*
11 *5650.1 of the Fish and Game Code.*