

By Mr. Scaccia of Boston, petition of Angelo M. Scaccia for legislation to require disclosure of past hazardous waste disposal. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Nine.

AN ACT TO REQUIRE DISCLOSURE OF PAST HAZARDOUS WASTE DISPOSAL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 2 of chapter 21E of the General Laws,
2 as appearing in Section 5 of chapter 7 of the acts of 1983, is hereby
3 amended by inserting after the definition of "Act of God" the
4 following definition: —

5 "Acutely hazardous waste", any waste defined by the depart-
6 ment as such in regulations promulgated pursuant to chapter 21C,
7 regardless of whether the waste had been so defined at the time
8 of disposal.

1 SECTION 2. Said section 2 of said chapter 21E, as so appear-
2 ing, is hereby further amended by inserting after the definition
3 of "CERCLA" the following definition: —

4 "Chief executive officer", the city manager in any city having
5 a city manager, the mayor in any other city; the town manager
6 in any town having a town manager, the chairman of the board
7 of selectmen in any other town.

1 SECTION 3. Said section 2 of said chapter 21E, as so appear-
2 ing is hereby further amended by inserting after the definition of
3 "Department" the following definition: —

4 "Disposal", the discharge, deposit, injection, dumping, spilling,
5 leaking, incineration or placing of any hazardous waste or
6 hazardous material into or on any land or water so that such

7 substance or any constituent thereof may enter the environment
8 or be emitted into the air or discharged into any waters, including
9 ground waters.

1 SECTION 4. Said section 2 of said chapter 21E, as so appear-
2 ing, is hereby amended by inserting after the definitions of
3 “Hazardous material” the following definition: —

4 “Hazardous waste”, a waste, or combination of wastes, which
5 because of its quantity, concentration or physical, chemical or
6 infectious characteristics may cause, or significantly contribute to
7 an increase in mortality or an increase in serious irreversible or
8 incapacitating reversible illness or pose a substantial present or
9 potential hazard to human health, safety, welfare or to the
10 environment when improperly treated, stored, transported, used,
11 or disposed of, or otherwise managed, however, not to include
12 solid or dissolved materials in irrigation return flows or industrial
13 discharges which are point sources subject to permits under
14 section 402 of the Federal Water Pollution Control Act of 1967
15 as amended, or source, special nuclear, or byproduct material as
16 defined by the Atomic Energy Acts of 1954. The term includes
17 any waste listed or defined by the department as hazardous waste
18 in regulations pursuant to either chapter 21C of the General Laws
19 or this chapter, regardless of whether the waste had been so
20 defined at the time of disposal.

1 SECTION 5. Chapter 21E of the General Laws is hereby
2 amended by inserting after section 7 the following sections: —

3 Section 7A. (a) Any person who is described in paragraph (a)
4 of section five or who:

5 (1) Between nineteen hundred and forty and the effective date
6 of this section engaged in production of fabricated metal products;
7 measurement, analysis or control instruments; chemicals or allied
8 products; electrical equipment or electronic machinery; or other
9 machinery or such other hazardous waste producing activities as
10 specified by the department in regulations; (2) owned or operated
11 a facility at which hazardous wastes were disposed; (3) knows or
12 should know that he was engaged in the transportation or disposal
13 of more than fifty-five gallons of hazardous waste or five gallons
14 of an acutely hazardous waste in any year between nineteen

15 hundred and forty and the effective date of this section; or (4)
16 engaged in such other activities as the department may specify in
17 regulations; shall file a notice with the department detailing past
18 hazardous waste disposal practices between nineteen hundred and
19 forty and the effective date of this section.

20 (b) The notice required by paragraph (a) of this section shall
21 state: (1) to the extent that such information is known or can be
22 ascertained with reasonable diligence, the amount and type of
23 hazardous waste handled for any year since nineteen hundred and
24 forty in which more than fifty-five gallons of hazardous waste or
25 five gallons of an acutely hazardous waste were handled, and the
26 means of disposal of such waste, including the names of any
27 transporters or disposal facilities, and the ultimate location of
28 disposal; (2) documentation of the person's efforts to obtain such
29 information; and (c) a statement that no hazardous waste was
30 disposed or is known to have been disposed for each year in which
31 the information obtained by reasonable diligence shows that no
32 hazardous waste was handled or disposed.

33 To the extent to which they are not known precisely, facts,
34 locations and volumes should be approximated and any
35 approximations should be identified as such in the notice.

36 All persons to whom this section applies shall exercise
37 reasonable diligence in ascertaining the locations, characteristics
38 and transporters of hazardous waste. For the purposes of this
39 section, "reasonable diligence" shall mean a minimum of a
40 thorough search through a person's records and files, and if
41 necessary to ascertain past hazardous waste handling practices,
42 a reasonable attempt to locate and interview former or current
43 employees or others familiar with the person's past waste disposal
44 practices. The department may, by regulation or otherwise, waive
45 any aspect of such research in cases where such actions would pose
46 a severe hardship to any person.

47 Within one hundred and eighty days after the date of enact-
48 ment of this section the department shall promulgate regulations
49 to effectuate the purposes of this section. The department may
50 prescribe in the regulations in greater detail the individuals and
51 entities who must notify, the manner and form of the notice, the
52 information included therein, and classes of successors in interest
53 of assignees who may be required to file the notice. The

54 department also may establish certain classes of activities or wastes
55 for which the reporting thresholds of five gallons of an acutely
56 hazardous waste and fifty-five gallons of other hazardous waste
57 are increased or decreased due to the relative threat to public
58 health, safety, welfare and the environment posed by improper
59 management or disposal of such wastes.

60 Within one hundred and eighty days after the department
61 promulgates regulations implementing the requirements of this
62 section, all persons to whom the notice requirement applies shall
63 file the required notification. The department may grant an
64 extension of up to ninety days to any person who demonstrates
65 that he has made a good faith effort to comply within the initial
66 compliance period. The department may grant an exemption or
67 variance from any or all of the requirements of this section if it
68 finds such exemption or variance to be consistent with the
69 protection of public health, safety, welfare and the environment
70 and justified by a compelling reason.

71 No person shall be excused from notifying under this section
72 on the ground that such disclosure may tend to incriminate him,
73 but no individual shall be subjected to any criminal prosecution,
74 criminal penalty or criminal forfeiture, except a prosecution for
75 giving an incomplete or false statement under this section, or for
76 destruction of records under this section, for or on account of any
77 transaction, matter or thing concerning which he provides notice
78 under this section.

79 Notifications which were submitted to the Environmental
80 Protection Agency pursuant to 42 U.S.C. 9603(c) prior to the
81 enactment of this section shall satisfy the requirements of this
82 section to the extent that such notices disclose all of the infor-
83 mation required by this section.

84 The notification requirement of this section shall not apply to
85 ordinary household waste disposal, including the disposal of waste
86 oil in quantities of less than fifty-five gallons per year.

87 Beginning with the date of enactment of this section, and for
88 thirty years thereafter, or at any earlier time if an exemption or
89 variance is granted by the Commissioner, it shall be unlawful for
90 any person to knowingly destroy, mutilate, erase, dispose of,
91 conceal or otherwise render unavailable, unreadable or false any
92 records relating to the location, transportation, identity,

93 characteristics, quantity, origin, or condition of hazardous waste
94 or hazardous materials disposed of prior to the enactment of this
95 section.

96 Within one year after the deadline for persons to provide notice
97 under this section, the department shall compile the results of the
98 notifications in a report which shall contain, at a minimum:

99 (a) the name and address of each person notifying and the type
100 of activity that they are or were engaged in;

101 (b) the amount and type of hazardous waste handled by each
102 notifier and the means of disposal utilized, including the name
103 of any transporter or disposal facility and the ultimate location
104 of disposal, unless an aspect of this information is deemed a trade
105 secret pursuant to section twelve, in which case, the omission of
106 such information should be noted; and

107 (c) the amount and type of wastes reported to be located at each
108 site.

109 Such report shall be a public record and shall be distributed
110 to the chief executive officer of every city and town in the com-
111 monwealth. The department shall update the report as needed,
112 and at least annually for two subsequent years.

113 The results of the notifications required by this section shall be
114 utilized by the department to assist in locating and assessing
115 releases and threats of hazardous materials in the commonwealth.
116 In addition, the department shall undertake a program to detect
117 undiscovered locations of past hazardous waste disposal through
118 sampling of soil, air or water in carefully targeted areas, through
119 the encouragement of anonymous tips as to past waste disposal
120 practices, and such other techniques as the department deems
121 appropriate. All work by the department to compile and utilize
122 the information in the notices, as well as other work to detect
123 undiscovered sites of past hazardous waste disposal, shall qualify
124 as "projects to assess" releases and threats of releases of hazardous
125 materials, such that monies may be expended as provided by
126 section six of chapter seven of the acts of nineteen hundred and
127 eighty-three, and fees on the transportation of hazardous waste
128 may be assessed to recover the costs, as provided by section seven
129 of chapter twenty-one C.

130 Any ten persons domiciled within the commonwealth, or any
131 political subdivision, may commence an action in the superior

132 court department of the trial court to compel any person to whom
133 the requirements of this section apply to file a complete notice
134 as required by this section. Plaintiffs who substantially contribute
135 to the goals of this section shall be awarded reasonable costs and
136 attorney's fees.

137 Section 7B. Any person who knows or should know of his
138 obligation to notify the department under sections 7 or 7A of this
139 chapter and who fails to provide the required notice, falsifies such
140 notice, or destroys evidence as prohibited by section 7A of this
141 chapter, shall not be entitled to any limitation of liability or
142 defenses set out in paragraph (b), (c) or (d) of section five.
143 Furthermore, if such person is found liable under said section five
144 in an action brought by the commonwealth, punitive damages
145 shall be assessed against such person as follows. The court shall
146 compute the defendant's liability to the department for costs of
147 assessing, containing or removing hazardous materials, and the
148 court shall require the defendant to pay damages equal to three
149 times this amount.

1 SECTION 6. If any provision of this act, or the application of
2 any provision of this act to any person or circumstances, is held
3 invalid, the application of such provision to other persons or
4 circumstances and the remainder of this act shall not be affected
5 thereby.

HOUSE

No. 117

AN ACT TO AMEND THE CONSTITUTION OF THE STATE OF MICHIGAN IN RELATION TO THE OFFICE OF THE ATTORNEY GENERAL

SECTION 1. The Constitution of the State of Michigan is amended to read:

ARTICLE IV, SECTION 1. The office of the Attorney General shall be held by one person who shall be elected by the people of the State at the general election to be held in the year 1900 and in every fourth year thereafter.

SECTION 2. The term of office of the Attorney General shall be four years.

SECTION 3. The salary of the Attorney General shall be fixed by the Legislature.

SECTION 4. The Attorney General shall be the chief legal officer of the State and shall have the honor and precedence of a Justice of the Supreme Court.

