

By Mr. Scaccia of Boston, petition of Angelo M. Scaccia for legislation to establish the environmental crimes law. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Three.

AN ACT RELATIVE TO ENVIRONMENTAL CRIMES.

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

1 The General Laws of Massachusetts are hereby amended by
2 inserting after Chapter 21I the following Chapter "21J":

3 Section 1. Title.

4 This chapter will have the title "The Environmental Crimes
5 Act".

6 Section 2. Offense.

7 A person or organization who commits an environmental
8 offense and by the commission of an environmental offense
9 knowingly or recklessly causes a risk of:

10 (1) death or fatal condition of a human being;

11 (2) environmental catastrophe; or

12 (3) serious bodily injury to a human being

13 shall be punished according to the provisions set forth in
14 section 4.

15 Section 3. Definitions.

16 As used in this chapter, the following words shall have the
17 following meanings:

18 (A) "Actual costs": the amount of money spent by an individual
19 or organization to produce a good or service.

20 (B) "Compliance costs": the amount of money spent by an
21 individual or organization to produce a good or service while such
22 individual or organization complies with all applicable
23 environmental laws and regulations.

24 (C) "Environmental catastrophe":

25 (1) the death or injury to a member of a threatened or
26 endangered species of fish, wildlife, plant, or other natural
27 resources;

28 (2) death or injury to 20 percent or more of the known
29 population of any species of fish, wildlife, or plant within a defined
30 ecosystem;

31 (3) death or injury to 5 percent of the known population of any
32 species of fish, wildlife, or plant within the Commonwealth or the
33 waters of the Commonwealth or;

34 (4) destruction or alteration of habitat, or release of any
35 pollutant in an amount or a location that causes:

36 (a) serious disruption of any ecosystem or food chain;

37 (b) environmental contamination of any species of fish,
38 wildlife, or plant, unremediable without causing significant
39 environmental damage, or unremediable within one generation;

40 (c) serious generic or toxicological effects on any species of fish,
41 wildlife, or plant;

42 (d) serious disruption or alteration of local, regional, or global
43 climate; or

44 (e) significant waste or misuse of public natural resources;

45 "Environmental Catastrophe" does not include the planned
46 destruction of a targeted species of wildlife or plant life that results
47 from the legal application of a registered pesticide by a licensed
48 pesticide dealer or certified pesticide applicator pursuant to
49 M.G.L. chapter 132B, sections 9 and 10.

50 (D) "Environmental Offense": a criminal violation of the
51 following statutes or regulations adopted thereunder:

52 (1) Massachusetts Air Pollution Control Law, M.G. L. ch. 111

53 (2) Oil and Hazardous Material Release Prevention and
54 Response Act, M.G.L. ch. 21E;

55 (3) Hazardous Waste Management Act, M.G.L. ch. 21C;

56 (4) Toxic Use Reduction Act, M.G.L. ch. 21I;

57 (5) Massachusetts Clean Water Act, M.G.L. ch. 21, §26-53;

58 (6) Wetlands Protection Act, M.G.L. ch. 131, § 40;

59 (7) State Environmental Code, M.G.L. ch. 21A, § 13;

60 (8) Coastal Wetlands Restrictions Act, M.G.L. ch 130, § 105;

61 (9) Waterways Act, M.G.L. ch. 91;

62 (10) Pesticides Control Act, M.G.L. ch. 132B § 14;

63 (11) Solid Waste Disposal Act, M.G.L. ch. 21H; and

64 (12) Water Supply Statute, ch. 111, § 160.

65 (E) "Instrumentalities": equipment, materials, products,
66 vessels, vehicles or aircraft, used or intended for use in an organi-
67 zation's activities.

68 (F) "Knowingly": a state of mind in which a person or organi-
69 zation acts in regard to a material element of an offense:

70 (1) with the awareness of the practical certainty that such action
71 or omission will result in death or fatal condition to a human
72 being; an environmental catastrophe; or serious bodily injury to
73 a human being.

74 (2) in such a way that a reasonable person or organization
75 under the circumstances, would have been aware of the practical
76 certainty that death or fatal condition to a human being; an envi-
77 ronmental catastrophe; or serious bodily injury to a human being,
78 would result from defendant's acts or omissions.

79 (G) "Organization": an agency or political subdivision of the
80 United States or Commonwealth, a governmental, public, or
81 private corporation or authority, trust firm, joint stock company
82 partnership, association or other entity of a group or an officer,
83 employee or agent of that group.

84 (H) "Profits": assets of value that an organization retains from
85 its operations above its costs. Assets may include moneys,
86 accounts receivable and conveyances.

87 (I) "Recklessly": a state of mind where a person or organization
88 consciously disregards a substantial and unjustifiable risk in
89 respect to a material element of an offense. The risk must reflect
90 a nature and degree that, considering the nature and purpose of
91 his conduct and the circumstances known to him, its disregard
92 involves a gross deviation from the standard of conduct that a
93 law abiding person or organization would observe in the situation.

94 (J) "Secretary": the Secretary of Environmental Affairs;

95 (K) "Serious bodily injury": bodily injuries that involve:

96 (1) substantial risk of death;

97 (2) unconsciousness;

98 (3) extreme physical pain;

99 (4) protracted and obvious disfigurement;

100 (5) protracted loss or impairment of the function of a bodily
101 member, organ or mental facility;

- 102 (6) reproductive or genetic damage;
103 (7) increased risk of cancer or other chronic ailment; or
104 (8) serious illness.
105 (L) "Species": a class of individuals having common attributes
106 that are designated by a common name and interbreed when
107 mature.

108 Section 4. Penalties.

109 Notwithstanding the penalty provisions of other laws, an
110 offense under section 2 shall be treated as a felony and be punished
111 according to the following provisions:

112 (A) A first offense under section 2(1) or 2(2) shall be punished
113 by:

114 (1) imprisonment in the state prison for not less than 5 years
115 or more than 15 years unless the underlying statute allows for a
116 longer term; or

117 (2) a fine of not less than \$150,000 and not more than \$250,000
118 in the case of an individual and not less than \$500,000 and not
119 more than \$1,000,000 in the case of an organization; or both.

120 (B) A first offense under section 2(3) shall be punished by:

121 (1) imprisonment in the state prison for not less than 3 years
122 or more than 10 years unless the underlying statute allows for a
123 longer term; or

124 (2) a fine of not less than \$125,000 and not more than \$250,000
125 in the case of an individual and not less than \$300,000 and not
126 more than \$750,000 in the case of an organization; or both.

127 (C) A subsequent offense under section 2 within 10 years after
128 conviction of a prior offense shall be punished by:

129 (1) imprisonment of not less than 10 years and not more than
130 30 years; or

131 (2) a fine of not less than \$250,000 and not more than \$500,000
132 in the case of an individual and not less than \$1,000,000 and not
133 more than \$2,000,000 in the case of an organization; or both.

134 Section 5. Forfeiture Procedures.

135 (A) The district attorney or attorney general shall have the
136 authority to request the forfeiture of:

137 (1) any profits generated and attained as the result of an envi-
138 ronmental offense; and

139 (2) any instrumentalities used or intended for use in the
140 commission or facilitation of an environmental offense.

141 (B) Motions for Forfeiture. (1) A District Attorney or the
142 Attorney General:

143 (a) shall petition the superior court or court having jurisdiction
144 over criminal proceedings relating to offenses under section 2, to
145 order forfeiture of profits generated as a result of an environ-
146 mental offense; or

147 (b) may petition the superior court or court having jurisdiction
148 over criminal proceedings relating to offenses under section 2, to
149 order forfeiture of an instrumentality used or related to the
150 commission of an environmental offense; or both.

151 (2) The court shall order forfeiture of profits generated as a
152 result of an environmental offense, or instrumentalities directly
153 related to or used in the commission or facilitation of an envi-
154 ronmental offense. The court shall order such forfeiture unless the
155 alleged violator shows that the proposed forfeited profits or
156 instrumentalities are indispensable to the organization's existence.

157 (3) The court shall declare profits or instrumentalities forfeited
158 pursuant to the attorney general or district attorney proving all
159 material facts, relating to the forfeiture, by a preponderance of
160 the evidence.

161 (C) Distribution and Accounting of Forfeiture Proceeds. The
162 court shall distribute:

163 (1) forfeited profit proceeds directly to the General Fund

164 (2) forfeited instrumentalities to the Secretary of Adminis-
165 tration and Finance.

166 The Secretary of Administration and Finance shall first offer
167 such instrumentalities to the Department of Environmental
168 Protection. Thereafter, the Secretary may offer the instrumentali-
169 ties to other state agencies in accordance with any surplus
170 property procedures. Any refused instrumentalities will be
171 auctioned and the General Fund will receive auction proceeds.

172 Section 6. Procedures for Profit Determination.

173 In determining profits for forfeiture under section 5, the court
174 shall:

175 (1) use industry standards to determine the individual or
176 organization's compliance costs with regard to relevant environ-
177 mental laws and procedures; and

178 (2) calculate the difference between the offending individual or
179 organization's actual costs and their compliance costs; and

180 (3) calculate the amount of income above compliance costs
181 received by an individual or organization as a direct result of the
182 environmental offense.

183 The sum of (2) and (3) above shall constitute profits for
184 forfeiture.

185 Profit calculation will begin with the first known offense
186 through the last known offense. Such profit calculation shall apply
187 to isolated offenses, as well as to a series or continuum of offenses
188 committed over time.

189 Section 7. Environmental Rewards.

190 (A) Authority and Conditions for Granting Rewards

191 The Secretary of Environmental Affairs is hereby authorized
192 to give a monetary reward to any person who provides infor-
193 mation leading to the arrest or conviction of an individual or
194 organization under this statute. Prior to making an award
195 available, the Secretary will inform the Secretary of Adminis-
196 tration and Finance of his intention to offer a reward and the
197 reasons for so doing.

198 Reward monies shall come from the General Fund.

199 The Secretary may establish such an award if:

200 (1) the Secretary determines that such a reward would serve
201 the public interest of protecting the environment; and

202 (2) a reasonable connection exists between the arrest or
203 conviction of suspected violators and the rewarded information.

204 Upon the arrest or conviction of a violator under this statute,
205 the secretary shall inform the Secretary of Administration and
206 Finance in writing of his determination to grant such a reward.
207 The Secretary will describe the circumstances and amount for
208 granting the reward.

209 (B) Exceptions; Restrictions. (1) Those persons employed by
210 an agency under the office of environmental affairs; or any federal,
211 state, or local authority whose responsibilities include
212 investigating or prosecuting environmental offenses, shall not be
213 eligible for a reward under this section.

214 (2) The Secretary may set the amount of the reward or rewards,
215 not to exceed a total of \$10,000 in any one case, or \$50,000 in
216 any one fiscal year.

217 (3) If more than one person applies for payment of a reward
218 in any one case, the secretary shall determine to whom and in what
219 amount to pay the reward. The secretary's determination and
220 allocation shall be final and unappealable.

221 Upon warrant from the Secretary, the treasurer shall pay such
222 reward.

223 Section 8. Severability.

224 If any provision of this statute is held to be invalid, it shall be
225 severable from the other sections of this statute and it shall not
226 affect the other provisions of this statute.

