

By Senator Atwater

25-1661-04

See HB

1 A bill to be entitled
2 An act relating to pollution control; amending
3 s. 403.121, F.S.; revising judicial and
4 administrative remedies for violations of ch.
5 403, F.S.; requiring the Department of
6 Environmental Protection to impose
7 administrative penalties for certain additional
8 practices, failures to comply with certain
9 requirements, or violations; providing
10 limitations and exceptions; providing an
11 effective date.

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13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Section 403.121, Florida Statutes, is
16 amended to read:

17 403.121 Enforcement; procedure; remedies.--The
18 department shall have the following judicial and
19 administrative remedies available to it for violations of this
20 chapter, as specified in s. 403.161(1).

21 (1) Judicial remedies:

22 (a) The department may institute a civil action in a
23 court of competent jurisdiction to establish liability and to
24 recover damages for any injury to the air, waters, or
25 property, including animal, plant, and aquatic life, of the
26 state caused by any violation.

27 (b) The department may institute a civil action in a
28 court of competent jurisdiction to impose and to recover a
29 civil penalty for each violation in an amount of not more than
30 \$10,000 per offense. However, the court may receive evidence
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1 in mitigation. Each day during any portion of which such
2 violation occurs constitutes a separate offense.

3 (c) Except as provided in paragraph (2)(c), it shall
4 not be a defense to, or ground for dismissal of, these
5 judicial remedies for damages and civil penalties that the
6 department has failed to exhaust its administrative remedies,
7 has failed to serve a notice of violation, or has failed to
8 hold an administrative hearing prior to the institution of a
9 civil action.

10 (2) Administrative remedies:

11 (a) The department may institute an administrative
12 proceeding to establish liability and to recover damages for
13 any injury to the air, waters, or property, including animal,
14 plant, or aquatic life, of the state caused by any violation.
15 The department may order that the violator pay a specified sum
16 as damages to the state. Judgment for the amount of damages
17 determined by the department may be entered in any court
18 having jurisdiction thereof and may be enforced as any other
19 judgment.

20 (b) If the department has reason to believe a
21 violation has occurred, it may institute an administrative
22 proceeding to order the prevention, abatement, or control of
23 the conditions creating the violation or other appropriate
24 corrective action. Except for violations involving hazardous
25 wastes, asbestos, air-operation permits, s. 403.08725 or rules
26 adopted thereunder, or underground injection, the department
27 shall proceed administratively in all cases in which the
28 department seeks administrative penalties that do not exceed
29 \$10,000 per assessment as calculated in accordance with
30 subsections (3), (4), (5), (6), and (7). Pursuant to 42 U.S.C.
31 s. 300g-2, the administrative penalty assessed pursuant to

1 subsection (3), subsection (4), or subsection (5) against a
2 public water system serving a population of more than 10,000
3 shall not be less than \$1,000 per day per violation.The
4 department shall not impose administrative penalties in excess
5 of \$10,000 in a notice of violation. The department shall not
6 have more than one notice of violation seeking administrative
7 penalties pending against the same party at the same time
8 unless the violations occurred at a different site or the
9 violations were discovered by the department subsequent to the
10 filing of a previous notice of violation.

11 (c) An administrative proceeding shall be instituted
12 by the department's serving of a written notice of violation
13 upon the alleged violator by certified mail. If the department
14 is unable to effect service by certified mail, the notice of
15 violation may be hand delivered or personally served in
16 accordance with chapter 48. The notice shall specify the
17 provision of the law, rule, regulation, permit, certification,
18 or order of the department alleged to be violated and the
19 facts alleged to constitute a violation thereof. An order for
20 corrective action, penalty assessment, or damages may be
21 included with the notice. When the department is seeking to
22 impose an administrative penalty for any violation by issuing
23 a notice of violation, any corrective action needed to correct
24 the violation or damages caused by the violation must be
25 pursued in the notice of violation or they are waived.
26 However, no order shall become effective until after service
27 and an administrative hearing, if requested within 20 days
28 after service. Failure to request an administrative hearing
29 within this time period shall constitute a waiver thereof,
30 unless the respondent files a written notice with the
31 department within this time period opting out of the

1 administrative process initiated by the department to impose
2 administrative penalties. Any respondent choosing to opt out
3 of the administrative process initiated by the department in
4 an action that seeks the imposition of administrative
5 penalties must file a written notice with the department
6 within 20 days after service of the notice of violation opting
7 out of the administrative process. A respondent's decision to
8 opt out of the administrative process does not preclude the
9 department from initiating a state court action seeking
10 injunctive relief, damages, and the judicial imposition of
11 civil penalties.

12 (d) If a person timely files a petition challenging a
13 notice of violation, that person will thereafter be referred
14 to as the respondent. The hearing requested by the respondent
15 shall be held within 180 days after the department has
16 referred the initial petition to the Division of
17 Administrative Hearings unless the parties agree to a later
18 date. The department has the burden of proving with the
19 preponderance of the evidence that the respondent is
20 responsible for the violation. No administrative penalties
21 should be imposed unless the department satisfies that burden.
22 Following the close of the hearing, the administrative law
23 judge shall issue a final order on all matters, including the
24 imposition of an administrative penalty. When the department
25 seeks to enforce that portion of a final order imposing
26 administrative penalties pursuant to s. 120.69, the respondent
27 shall not assert as a defense the inappropriateness of the
28 administrative remedy. The department retains its final-order
29 authority in all administrative actions that do not request
30 the imposition of administrative penalties.

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1 (e) After filing a petition requesting a formal
2 hearing in response to a notice of violation in which the
3 department imposes an administrative penalty, a respondent may
4 request that a private mediator be appointed to mediate the
5 dispute by contacting the Florida Conflict Resolution
6 Consortium within 10 days after receipt of the initial order
7 from the administrative law judge. The Florida Conflict
8 Resolution Consortium shall pay all of the costs of the
9 mediator and for up to 8 hours of the mediator's time per case
10 at \$150 per hour. Upon notice from the respondent, the Florida
11 Conflict Resolution Consortium shall provide to the respondent
12 a panel of possible mediators from the area in which the
13 hearing on the petition would be heard. The respondent shall
14 select the mediator and notify the Florida Conflict Resolution
15 Consortium of the selection within 15 days of receipt of the
16 proposed panel of mediators. The Florida Conflict Resolution
17 Consortium shall provide all of the administrative support for
18 the mediation process. The mediation must be completed at
19 least 15 days before the final hearing date set by the
20 administrative law judge.

21 (f) In any administrative proceeding brought by the
22 department, the prevailing party shall recover all costs as
23 provided in ss. 57.041 and 57.071. The costs must be included
24 in the final order. The respondent is the prevailing party
25 when an order is entered awarding no penalties to the
26 department and such order has not been reversed on appeal or
27 the time for seeking judicial review has expired. The
28 respondent shall be entitled to an award of attorney's fees if
29 the administrative law judge determines that the notice of
30 violation issued by the department seeking the imposition of
31 administrative penalties was not substantially justified as

1 defined in s. 57.111(3)(e). No award of attorney's fees as
2 provided by this subsection shall exceed \$15,000.

3 (g) Nothing herein shall be construed as preventing
4 any other legal or administrative action in accordance with
5 law. Nothing in this subsection shall limit the department's
6 authority provided in ss. 403.121, 403.131, and 403.141, to
7 judicially pursue injunctive relief. When the department
8 exercises its authority to judicially pursue injunctive
9 relief, penalties in any amount up to the statutory maximum
10 sought by the department must be pursued as part of the state
11 court action and not by initiating a separate administrative
12 proceeding. The department retains the authority to judicially
13 pursue penalties in excess of \$10,000 for violations not
14 specifically included in the administrative penalty schedule,
15 or for multiple or multiday violations alleged to exceed a
16 total of \$10,000. The department also retains the authority
17 provided in ss. 403.121, 403.131, and 403.141, to judicially
18 pursue injunctive relief and damages, if a notice of violation
19 seeking the imposition of administrative penalties has not
20 been issued. The department has the authority to enter into a
21 settlement, either before or after initiating a notice of
22 violation, and the settlement may include a penalty amount
23 different from the administrative penalty schedule. Any case
24 filed in state court because it is alleged to exceed a total
25 of \$10,000 in penalties may be settled in the court action for
26 less than \$10,000.

27 (h) Chapter 120 shall apply to any administrative
28 action taken by the department or any delegated program
29 pursuing administrative penalties in accordance with this
30 section.

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1 (3) Except for violations involving hazardous wastes,
2 asbestos, air-operation permits, s. 403.08725 or rules adopted
3 thereunder, or underground injection, administrative penalties
4 must be calculated according to the following schedule:

5 (a) For a drinking water contamination violation, the
6 department shall assess a penalty of \$2,000 for a Maximum
7 Containment Level (MCL) violation; plus \$1,000 if the
8 violation is for a primary inorganic, organic, or radiological
9 Maximum Contaminant Level or it is a fecal coliform bacteria
10 violation; plus \$1,000 if the violation occurs at a community
11 water system; and plus \$1,000 if any Maximum Contaminant Level
12 is exceeded by more than 100 percent. For failure to obtain a
13 clearance letter prior to placing a drinking water system into
14 service when the system would not have been eligible for
15 clearance, the department shall assess a penalty of \$3,000.
16 For failure to conduct required monitoring for each
17 contaminant group, or for failure to maintain chlorine
18 residual, the department shall assess a penalty of \$2,000. For
19 failure to obtain a clearance letter prior to placing a
20 drinking water system into service when the system would have
21 been eligible for clearance, the department shall assess a
22 penalty of \$1,000. For failure to timely submit a consumer
23 confidence report to the department, the department shall
24 assess a penalty of \$1,000.

25 (b) For failure to obtain a ~~required~~ wastewater permit
26 ~~or, other than~~ a permit to construct a domestic wastewater
27 collection and transmission system, for placing a domestic
28 wastewater collection and transmission system into service
29 prior to submitting proper notification to the department, or
30 for failure to obtain a wastewater permit revision required to
31 construct or modify a wastewater facility ~~required for surface~~

1 ~~water discharge~~, the department shall assess a penalty of
2 \$1,000. For failure to obtain a required wastewater permit or
3 a permit for surface water discharge, the department shall
4 assess a penalty of \$2,000. For exceedance of an effluent,
5 groundwater, or other limit established by a wastewater permit
6 or order for a discharge or activity, unless otherwise
7 stipulated by the order, the department shall assess a penalty
8 of \$2,000 for direct discharges or effluent-limitation
9 exceedances that resulted in a violation of the quality of
10 groundwater or surface water of the state and the Public
11 Access Reuse Systems, and a penalty of \$1,000 for indirect
12 discharge into waters of the state and for any other land
13 application or disposal. For an unpermitted or unauthorized
14 wastewater discharge into waters of the state, the department
15 shall assess a penalty of \$2,000. For an unpermitted or
16 unauthorized wastewater discharge that does not meet
17 applicable groundwater or surface water quality criteria, the
18 department shall assess a penalty of \$5,000.~~For a domestic or~~
19 ~~industrial wastewater violation not involving a surface water~~
20 ~~or groundwater quality violation, the department shall assess~~
21 ~~a penalty of \$2,000 for an unpermitted or unauthorized~~
22 ~~discharge or effluent-limitation exceedance. For an~~
23 ~~unpermitted or unauthorized discharge or effluent-limitation~~
24 ~~exceedance that resulted in a surface water or groundwater~~
25 ~~quality violation, the department shall assess a penalty of~~
26 ~~\$5,000.~~

27 (c) For a dredge and fill or stormwater violation, the
28 department shall assess a penalty of \$1,000 for unpermitted or
29 unauthorized dredging or filling or unauthorized construction
30 of a stormwater management system against the person or
31 persons responsible for the illegal dredging or filling, or

1 unauthorized construction of a stormwater management system
2 plus \$2,000 if the dredging or filling occurs in an aquatic
3 preserve, Outstanding Florida Water, conservation easement, or
4 Class I or Class II surface water, plus \$1,000 if the area
5 dredged or filled is greater than one-quarter acre but less
6 than or equal to one-half acre, and plus \$1,000 if the area
7 dredged or filled is greater than one-half acre but less than
8 or equal to one acre. The administrative penalty schedule
9 shall not apply to a dredge and fill violation if the area
10 dredged or filled exceeds one acre. The department retains the
11 authority to seek the judicial imposition of civil penalties
12 for all dredge and fill violations involving more than one
13 acre. The department shall assess a penalty of \$3,000 for the
14 failure to complete required mitigation, failure to record a
15 required conservation easement, or for a water quality
16 violation resulting from dredging or filling activities,
17 stormwater construction activities or failure of a stormwater
18 treatment facility. For stormwater management systems serving
19 less than 5 acres, the department shall assess a penalty of
20 \$2,000 for the failure to properly or timely construct a
21 stormwater management system. In addition to the penalties
22 authorized in this subsection, the department shall assess a
23 penalty of \$5,000 per violation against the contractor or
24 agent of the owner or tenant that conducts unpermitted or
25 unauthorized dredging or filling. For purposes of this
26 paragraph, the preparation or signing of a permit application
27 by a person currently licensed under chapter 471 to practice
28 as a professional engineer shall not make that person an agent
29 of the owner or tenant.

30 (d) For mangrove trimming or alteration violations,
31 the department shall assess a penalty of \$5,000 per violation

1 against the contractor or agent of the owner or tenant that
2 conducts mangrove trimming or alteration without a permit as
3 required by s. 403.9328. For purposes of this paragraph, the
4 preparation or signing of a permit application by a person
5 currently licensed under chapter 471 to practice as a
6 professional engineer shall not make that person an agent of
7 the owner or tenant.

8 (e) For solid waste violations, the department shall
9 assess a penalty of \$2,000 for the unpermitted or unauthorized
10 disposal or storage of solid waste; plus \$1,000 if the solid
11 waste is Class I or Class III (excluding yard trash) or if the
12 solid waste is construction and demolition debris in excess of
13 20 cubic yards, plus \$1,000 if the waste is disposed of or
14 stored in any natural or artificial body of water or within
15 500 feet of a potable water well, plus \$1,000 if the waste
16 contains PCB at a concentration of 50 parts per million or
17 greater; untreated biomedical waste; friable asbestos greater
18 than 1 cubic meter which is not wetted, bagged, and covered;
19 used oil greater than 25 gallons; or 10 or more lead acid
20 batteries. The department shall assess a penalty of \$3,000 for
21 failure to properly maintain leachate control; unauthorized
22 burning; failure to have a trained spotter on duty at the
23 working face when accepting waste; failure to provide access
24 control for three consecutive inspections. The department
25 shall assess a penalty of \$2,000 for failure to construct or
26 maintain a required stormwater management system.

27 (f) For an air emission violation other than a
28 violation involving an air-operation permit or s. 403.08725 or
29 rules adopted thereunder, the department shall assess a
30 penalty of \$1,000 for an unpermitted ~~or unauthorized~~ air
31 emission or an ~~air-emission-permit~~ exceedance of an allowable

1 emission, other than a visible emission violation, ~~plus \$1,000~~
2 if the emission results in an air quality violation, plus
3 \$3,000 if the emission was from a major source and the source
4 was major for the pollutant in violation; plus \$1,000 if the
5 emission was more than 150 percent of the allowable level. For
6 a visible emission violation, the department shall assess a
7 penalty of \$500. For failure to timely apply for a renewal of
8 a permit, the department shall assess a penalty of \$1,000. For
9 failure to submit an annual statement of compliance or failure
10 to identify a violation in such statement, the department
11 shall assess a penalty of \$1,000. For a violation of a
12 physical or operational limit on capacity of an emission unit
13 or facility to emit a pollutant, the department shall assess a
14 penalty of \$4,000.

15 (g) For storage tank system and petroleum
16 contamination violations, the department shall assess a
17 penalty of \$5,000 for failure to empty a damaged storage
18 system as necessary to ensure that a release does not occur
19 until repairs to the storage system are completed; when a
20 release has occurred from that storage tank system; for
21 failure to timely recover free product; or for failure to
22 conduct remediation or monitoring activities until a
23 no-further-action or site-rehabilitation completion order has
24 been issued. The department shall assess a penalty of \$3,000
25 for failure to timely upgrade a storage tank system. The
26 department shall assess a penalty of \$2,000 for failure to
27 conduct or maintain required release detection; failure to
28 timely investigate a suspected release from a storage system;
29 depositing motor fuel into an unregistered storage tank
30 system; failure to timely assess or remediate petroleum
31 contamination; or failure to properly install a storage tank

1 system. The department shall assess a penalty of \$1,000 for
2 failure to properly operate, maintain, or close a storage tank
3 system.

4 (h) For an aquatic plant management violation, the
5 department shall assess a penalty of \$5,000 against a
6 contractor or agent of the riparian owner or tenant that
7 conducts unpermitted or unauthorized aquatic plant management
8 activities. The department shall assess a penalty of \$3,000
9 for unpermitted or unauthorized possession of a prohibited
10 aquatic plant. The department shall assess a penalty of \$2,000
11 for the unpermitted or unauthorized collection of aquatic
12 plants. The department shall assess a penalty of \$1,000 for
13 failure to timely complete revegetation required as a
14 condition of a permit. The department shall assess a penalty
15 of \$1,000 for unpermitted or unauthorized aquatic plant
16 management activities; plus \$1,000 if the violation occurs in
17 an aquatic preserve or an Outstanding Florida Water; plus
18 \$1,000 if the area where aquatic plants are damaged or
19 destroyed, in excess of any permitted area or authorized
20 exemptions, is greater than one-quarter but less than one-half
21 acre; and plus \$1,000 if the area where aquatic plants are
22 damaged or destroyed, in excess of any permitted area or
23 authorized exemptions, is greater than one-half acre but less
24 than or equal to one acre. The administrative penalty schedule
25 shall not apply to an aquatic plant management violation if
26 the area where aquatic plants are damaged or destroyed, in
27 excess of any permitted area or authorized exemptions, exceeds
28 one acre. The department retains the authority to seek
29 judicial imposition of civil penalties for all aquatic plant
30 management violations if the area where aquatic plants are

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1 damaged or destroyed, in excess of any permitted area or
2 authorized exemptions, exceeds one acre.

3 (i) For waste cleanup violations, the department shall
4 assess a penalty of \$500 per day for failure to timely submit
5 any plans, reports, or other information required by a
6 department consent order or final order.

7 (j) For a National Pollutant Discharge and Elimination
8 System (NPDES) stormwater violation, the department shall
9 assess a penalty of \$4,000 for failure to obtain a required
10 NPDES Stormwater Municipal Separate Storm Sewer System permit.
11 The department shall assess a penalty of \$3,000 for failure to
12 obtain a required NPDES Stormwater Multi-Sector Generic Permit
13 or a required NPDES Stormwater Generic Permit for large
14 construction activity, as defined in rule 62-621.300(4)(a),
15 Florida Administrative Code. The department shall assess a
16 penalty of \$2,000 for large construction activities or
17 industrial facilities that discharge stormwater into an
18 aquatic preserve, an Outstanding Florida Water, or a Class II
19 surface water or that discharge a listed pollutant into a
20 verified state impaired water body. The department shall
21 assess a penalty of \$1,500 for failure to obtain a required
22 NPDES Stormwater Generic Permit for a small construction
23 activity, as defined in rule 62-621.300(4)(a), Florida
24 Administrative Code. The department shall assess a penalty of
25 \$1,000 for any NPDES stormwater regulated site that does not
26 have a complete and accurate Stormwater Pollution Prevention
27 Plan and has not conducted required weekly or permit-specified
28 rainfall event inspections or for small construction
29 activities that discharge stormwater into an aquatic preserve,
30 an Outstanding Florida Water, or a Class II surface water or

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1 that discharge a listed pollutant to a verified state impaired
2 water body.

3 (4) In an administrative proceeding, in addition to
4 the program-specific penalties that may be assessed under
5 subsection (3), the department shall assess administrative
6 penalties according to the following schedule for those
7 violations not otherwise addressed in subsections (2) and (3):

8 (a) For failure to satisfy financial responsibility
9 requirements or for violation of s. 377.371(1), \$5,000.

10 (b) For failure to install, maintain, or use a
11 required pollution control system or device, \$4,000.

12 (c) For failure to obtain a required permit before
13 construction or modification, \$3,000.

14 (d) For failure to conduct required monitoring or
15 testing; failure to conduct required release detection; or
16 failure to construct in compliance with a permit, \$2,000.

17 (e) For failure to maintain required staff to respond
18 to emergencies; failure to conduct required training; failure
19 to prepare, maintain, or update required contingency plans;
20 failure to adequately respond to emergencies to bring an
21 emergency situation under control; or failure to submit
22 required notification to the department, \$1,000.

23 (f) Except as provided in subsection (2) with respect
24 to public water systems serving a population of more than
25 10,000,for failure to prepare, submit, maintain, or use
26 required reports or other required documentation, \$500.

27 (5) Except as provided in subsection (2) with respect
28 to public water systems serving a population of more than
29 10,000,for failure to comply with any other departmental
30 regulatory statute or rule requirement not otherwise
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1 identified in this section, the department may assess a
2 penalty of \$500.

3 (6) For each additional day during which a violation
4 occurs, the administrative penalties in subsection (3),
5 subsection (4), and subsection (5) may be assessed per day per
6 violation.

7 (7) The history of noncompliance of the violator for
8 any previous violation resulting in an executed consent order,
9 but not including a consent order entered into without a
10 finding of violation, or resulting in a final order or
11 judgment after the effective date of this law involving the
12 imposition of \$2,000 or more in penalties shall be taken into
13 consideration in the following manner:

14 (a) One previous such violation within 5 years prior
15 to the filing of the notice of violation will result in a
16 25-percent per day increase in the scheduled administrative
17 penalty.

18 (b) Two previous such violations within 5 years prior
19 to the filing of the notice of violation will result in a
20 50-percent per day increase in the scheduled administrative
21 penalty.

22 (c) Three or more previous such violations within 5
23 years prior to the filing of the notice of violation will
24 result in a 100-percent per day increase in the scheduled
25 administrative penalty.

26 (8) The direct economic benefit gained by the violator
27 from the violation, where consideration of economic benefit is
28 provided by Florida law or required by federal law as part of
29 a federally delegated or approved program, shall be added to
30 the scheduled administrative penalty. The total administrative
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1 penalty, including any economic benefit added to the scheduled
2 administrative penalty, shall not exceed \$10,000.

3 (9) The administrative penalties assessed for any
4 particular violation shall not exceed \$5,000 against any one
5 violator, unless the violator has a history of noncompliance,
6 the economic benefit of the violation as described in
7 subsection (8) exceeds \$5,000, or there are multiday
8 violations. The total administrative penalties shall not
9 exceed \$10,000 per assessment for all violations attributable
10 to a specific person in the notice of violation.

11 (10) The administrative law judge may receive evidence
12 in mitigation. The penalties identified in subsection (3),
13 subsection (4), and subsection (5) may be reduced up to 50
14 percent by the administrative law judge for mitigating
15 circumstances, including good faith efforts to comply prior to
16 or after discovery of the violations by the department. Upon
17 an affirmative finding that the violation was caused by
18 circumstances beyond the reasonable control of the respondent
19 and could not have been prevented by respondent's due
20 diligence, the administrative law judge may further reduce the
21 penalty.

22 (11) Penalties collected pursuant to this section
23 shall be deposited in the Ecosystem Management and Restoration
24 Trust Fund or other trust fund designated by statute and shall
25 be used to fund the restoration of ecosystems, or polluted
26 areas of the state, as defined by the department, to their
27 condition before pollution occurred. The Florida Conflict
28 Resolution Consortium may use a portion of the fund to
29 administer the mediation process provided in paragraph (2)(e)
30 and to contract with private mediators for administrative
31 penalty cases.

1 (12) The purpose of the administrative penalty
2 schedule and process is to provide a more predictable and
3 efficient manner for individuals and businesses to resolve
4 relatively minor environmental disputes. Subsection (3),
5 subsection (4), subsection (5), subsection (6), or subsection
6 (7) shall not be construed as limiting a state court in the
7 assessment of damages. The administrative penalty schedule
8 does not apply to the judicial imposition of civil penalties
9 in state court as provided in this section.

10 Section 2. This act shall take effect upon becoming a
11 law.

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