

Act No. 52
Public Acts of 2009
Approved by the Governor
June 23, 2009
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**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2009**

**Introduced by Reps. Warren, Leland, Hansen, Terry Brown, Scripps, Lipton, Liss, Young, Tlaib, Durhal,
Meadows and Miller**

ENROLLED HOUSE BILL No. 4579

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 41303, 41305, 41306, 41309, 41311, 41313, and 41323 (MCL 324.41303, 324.41305, 324.41306, 324.41309, 324.41311, 324.41313, and 324.41323), section 41303 as amended by 2005 PA 78, section 41305 as amended and section 41306 as added by 2005 PA 79, section 41309 as amended by 2005 PA 76, sections 41311 and 41313 as added by 2005 PA 80, and section 41323 as added by 2005 PA 75, and by adding section 41302.

The People of the State of Michigan enact:

Sec. 41302. (1) The commission of natural resources may by order add to or delete from the list of prohibited species or restricted species under section 41301 any species other than an insect or plant species. Before issuing an order under this subsection, the commission of natural resources shall consult with the department of agriculture. After the consultation, and at least 30 days before the commission of natural resources issues the order, the department of natural resources shall post a copy of the proposed order on the department of natural resources' website and shall submit a copy of the proposed order to all of the following:

- (a) The legislature.
- (b) The standing committees of the senate and house of representatives with primary responsibility for any of the following:
 - (i) Agricultural issues.
 - (ii) Environmental issues.
 - (iii) Natural resources issues.

(2) The commission of agriculture may by order add to or delete from the list of prohibited species or restricted species under section 41301 any insect or plant species. Before issuing an order under this subsection, the commission of agriculture shall consult with the department of natural resources. After the consultation, and at least 30 days before

the commission of agriculture issues the order, the department of agriculture shall post a copy of the proposed order on the department of agriculture's website and shall submit a copy of the proposed order to all of the following:

(a) The legislature.

(b) The standing committees of the senate and house of representatives with primary responsibility for any of the following:

(i) Agricultural issues.

(ii) Environmental issues.

(iii) Natural resources issues.

(3) The commission of natural resources or the commission of agriculture, as applicable, shall list a species as a prohibited species or restricted species if the commission of natural resources or commission of agriculture, respectively, determines the following:

(a) For a prohibited species, all of the following requirements are met:

(i) The organism is not native to this state.

(ii) The organism is not naturalized in this state or, if naturalized, is not widely distributed in this state.

(iii) One or more of the following apply:

(A) The organism has the potential to harm human health or to severely harm natural, agricultural, or silvicultural resources.

(B) Effective management or control techniques for the organism are not available.

(b) For a restricted species, all of the following requirements are met:

(i) The organism is not native to this state.

(ii) The organism is naturalized and widely distributed in this state.

(iii) One or more of the following apply:

(A) The organism has the potential to harm human health or to harm natural, agricultural, or silvicultural resources.

(B) Effective management or control techniques for the organism are available.

Sec. 41303. (1) Subject to subsection (2), a person shall not knowingly possess a live organism if the organism is a prohibited species or restricted species, except under 1 or more of the following circumstances:

(a) The person intends to present a specimen of the prohibited species or restricted species, for identification or similar purposes, to a person who is a certified applicator or registered applicator under part 83, to a public or private institution of higher education, or to the department of natural resources, the department of agriculture, or any other state, local, or federal agency with responsibility for the environment, natural resources, or agriculture.

(b) The person has been presented with a specimen of a prohibited species or restricted species for identification or similar purposes under subdivision (a).

(c) The person possesses the prohibited species or restricted species in conjunction with otherwise lawful activity to eradicate or control the prohibited species or restricted species.

(d) If the prohibited species or restricted species is not an insect or plant species, the possession is pursuant to a permit issued for education or research purposes by the department of natural resources under section 41306. If the prohibited species or restricted species is an insect or plant species, the possession is pursuant to a permit issued for education or research purposes by the department of agriculture under section 41306 or by the United States department of agriculture.

(2) A person described in subsection (1)(b) or (c) shall notify the department of natural resources, the department of agriculture, or the department of environmental quality if the prohibited species or restricted species was found at a location where it was not previously known to be present.

Sec. 41305. A person shall not introduce a prohibited species, a restricted species, or a genetically engineered or nonnative aquatic plant, bird, crustacean, fish, mammal, or mollusk unless the introduction is authorized by 1 of the following, as applicable:

(a) For a fish, by a permit issued by the department of natural resources under section 48735.

(b) For an insect or plant, by a permit issued by the department of agriculture under section 41306.

(c) For any other species, by a permit issued by the department of natural resources under section 41306.

Sec. 41306. (1) A person shall apply for a permit that section 41303 or 41305 describes as being issued by the department of natural resources or the department of agriculture under this section on a form developed by the department of natural resources or the department of agriculture, respectively. The application shall be accompanied by

a fee based on the cost of administering this part. The department of natural resources or the department of agriculture, respectively, shall either grant an administratively complete application and issue a permit or deny the application.

(2) In determining whether to grant or deny an application for a permit for introduction of a genetically engineered organism required by section 41305, the department of natural resources or the department of agriculture, as applicable, shall consider whether any application for a federal permit or approval for the genetically engineered organism has been granted or denied.

(3) The department of natural resources or the department of agriculture may revoke or modify a permit issued by the department of natural resources or the department of agriculture, respectively, under subsection (1) after providing an opportunity for a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) The department of natural resources shall administer and enforce this part, except with respect to insect and plant species. The department of agriculture shall administer and enforce this part with respect to insect or plant species. In addition, any peace officer may enforce the criminal provisions of this part.

Sec. 41309. (1) A person who violates section 41303(2) is subject to a civil fine of not more than \$100.00.

(2) A person who violates section 41303(1), or a condition of a permit issued under this part, with respect to a restricted species is subject to a civil fine of not more than \$5,000.00. A person who violates section 41303(1), or a condition of a permit issued under this part, with respect to a prohibited species is subject to a civil fine of not more than \$10,000.00.

(3) A person who violates section 41303(1) knowing the possession is unlawful or who willfully or in a grossly negligent manner violates a condition of a permit issued under this part is guilty as follows:

(a) For a violation involving a restricted species, the person is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than \$1,000.00 or more than \$10,000.00.

(b) For a violation involving a prohibited species, the person is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$2,000.00 or more than \$20,000.00.

(4) A person who, with intent to damage natural, agricultural, or silvicultural resources or human health:

(a) Violates section 41303(1) with respect to a restricted species or possesses a nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$1,000.00 or more than \$250,000.00.

(b) Violates section 41303(1) with respect to a prohibited species or possesses a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk is guilty of a felony and may be imprisoned for not more than 4 years and shall be fined not less than \$2,000.00 or more than \$500,000.00.

(5) A person who sells or offers to sell a restricted species is subject to a civil fine of not less than \$1,000.00 or more than \$10,000.00. A person who sells or offers to sell a prohibited species is subject to a civil fine of not less than \$2,000.00 or more than \$20,000.00.

(6) A person who violates section 41305 is guilty as follows:

(a) For a violation involving a restricted species or a nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a misdemeanor and may be imprisoned for not more than 6 months and shall be fined not less than \$500.00 or more than \$5,000.00.

(b) For a violation involving a prohibited species or a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than \$1,000.00 or more than \$10,000.00.

(7) A person who violates section 41305 with respect to a restricted species or nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk and who knows or should know the identity of the restricted species or that the organism, whether a restricted species or other aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, is nonnative is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than \$1,000.00 or more than \$10,000.00.

(8) A person who violates section 41305 with respect to a prohibited species or a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk and who knows or should know the identity of the prohibited species or that the aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk is genetically engineered, respectively, is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$2,000.00 or more than \$20,000.00.

(9) A person who violates section 41305 knowing the introduction is unlawful, is guilty as follows:

(a) For a violation involving a restricted species or nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than \$1,000.00 or more than \$250,000.00.

(b) For a violation involving a prohibited species or a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a felony and may be imprisoned for not more than 4 years and shall be fined not less than \$2,000.00 or more than \$500,000.00.

(10) A person who, with intent to damage natural, agricultural, or silvicultural resources or human health, violates section 41305 is guilty as follows:

(a) For a violation involving a restricted species or nonnative aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a felony and may be imprisoned for not more than 3 years and shall be fined not less than \$1,000.00 or more than \$500,000.00.

(b) For a violation involving a prohibited species or a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk, the person is guilty of a felony and may be imprisoned for not more than 5 years and shall be fined not less than \$2,000.00 or more than \$1,000,000.00.

(11) In addition to any other civil or criminal sanction imposed under this section, a person who violates this part is liable for any damages to natural resources resulting from the violation, including, but not limited to, costs incurred to prevent or minimize such damages.

(12) This part does not apply to activities authorized under the Michigan aquaculture development act, 1996 PA 199, MCL 286.871 to 286.884.

Sec. 41311. (1) The invasive species fund is created within the state treasury.

(2) The department of natural resources and the department of agriculture shall forward to the state treasurer and the state treasurer shall deposit into the fund civil fines collected under section 41309 and permit fees collected under section 41306. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department of natural resources and the department of agriculture shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) The administration of this part, consistent with section 41306(4).

(b) Public education about preventing the introduction of, controlling, or eradicating prohibited species, restricted species, and other nonnative species and genetically engineered aquatic plants, birds, crustaceans, fish, insects, mammals, and mollusks.

Sec. 41313. The department of natural resources and the department of agriculture shall each provide all of the following information on its website:

(a) Information on the requirements of this part applicable to the public.

(b) The penalties for violating the requirements of this part.

(c) A list of prohibited species and restricted species along with a description and a photograph or drawing of each of those species.

(d) Each annual report of the department under section 41323, for not less than 3 years after its issuance.

Sec. 41323. (1) The department of natural resources shall do all of the following:

(a) By March 1 of each year, submit to the governor and the legislature a report that makes recommendations on all of the following:

(i) Additions to or deletions from the classes of genetically engineered or nonnative organisms covered by this part.

(ii) The status of various prohibited species and other problematic invasive species in this state, including, but not limited to, a list of infested waterbodies by species.

(iii) Preventing the introduction of and controlling or eradicating invasive species or genetically engineered aquatic plants, birds, crustaceans, fish, insects, mammals, or mollusks.

(iv) Restoration or remediation of habitats or species damaged by invasive species or genetically engineered organisms.

(v) Prioritizing efforts to prevent violations of and otherwise further the purposes of this part.

(vi) The specific areas of responsibility for various state departments under this part and the sharing of information on permits under this part among responsible state departments.

(vii) Educating citizens about their responsibilities under this part and their role in preventing the introduction of and controlling or eradicating prohibited species, restricted species, invasive species, and genetically engineered aquatic plants, birds, crustaceans, fish, insects, mammals, or mollusks.

(viii) Simplifying citizen access to state government for compliance with this part.

(ix) Legislation and funding to carry out the recommendations of the department of natural resources and otherwise further the purposes of this part.

(x) Other matters that the department of natural resources considers pertinent to the purposes of this part.

(b) Establish criteria for identifying waterbodies infested by prohibited species.

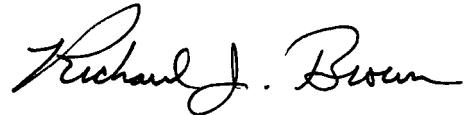
(c) Monitor and promote efforts to rescind the exemption under 40 CFR 122.3(a) for ballast water discharges.

(2) The department of natural resources shall carry out its reporting and other duties under this section in cooperation with the aquatic nuisance species council created under Executive Order No. 2002-21 and the department of agriculture.

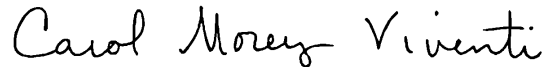
Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 280 of the 95th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor

Compiler's note: Senate Bill No. 280, referred to in enacting section 2, was filed with the Secretary of State June 23, 2009, and became 2009 PA 51, Eff. Sept. 21, 2009.