

1998 PUBLIC AND LOCAL ACTS

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[No. 546]

(SB 767)

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, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 73101, 73102, 73109, and 73110 (MCL 324.73101, 324.73102, 324.73109, and 324.73110), sections 73101, 73102, 73109, and 73110 as added by 1995 PA 58.

*The People of the State of Michigan enact:*

324.73101 Definitions; F to P. [M.S.A. 13A.73101]

Sec. 73101. As used in this part:

- (a) "Farm product" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.
- (b) "Farm property" means land used in the production of a farm product and all lands contained within the farm.
- (c) "Fish" means game fish or nongame fish as those terms are defined in section 48701.
- (d) "Fur-bearing animal" means that term as defined in section 43503.
- (e) "Game" means that term as defined in section 40103.
- (f) "Hunting dog" means a dog allowed to range freely to engage in or aid in hunting on the day the dog enters the property of another person.
- (g) "License" means a hunting, fishing, or fur harvester's license or, in the discretion of the court, any combination of such licenses. License does not mean a certificate, license, or permit under part 445 or 473.
- (h) "Protected animal" means that term as defined in section 40103.

324.73102 Entering or remaining on property of another; consent; exceptions. [M.S.A. 13A.73102]

Sec. 73102. (1) Except as provided in subsection (4), a person shall not enter or remain upon the property of another person, other than farm property or a wooded area connected to farm property, to engage in any recreational activity or trapping on that property without the consent of the owner or his or her lessee or agent, if either of the following circumstances exists:

(a) The property is fenced or enclosed and is maintained in such a manner as to exclude intruders.

(b) The property is posted in a conspicuous manner against entry. The minimum letter height on the posting signs shall be 1 inch. Each posting sign shall be not less than 50 square inches, and the signs shall be spaced to enable a person to observe not less than 1 sign at any point of entry upon the property.

(2) Except as provided in subsection (4), a person shall not enter or remain upon farm property or a wooded area connected to farm property for any recreational activity or

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trapping without the consent of the owner or his or her lessee or agent, whether or not the farm property or wooded area connected to farm property is fenced, enclosed, or posted.

(3) On fenced or posted property or farm property, a fisherman wading or floating a navigable public stream may, without written or oral consent, enter upon property within the clearly defined banks of the stream or, without damaging farm products, walk a route as closely proximate to the clearly defined bank as possible when necessary to avoid a natural or artificial hazard or obstruction, including, but not limited to, a dam, deep hole, or a fence or other exercise of ownership by the riparian owner.

(4) A person other than a person possessing a firearm may, unless previously prohibited in writing or orally by the property owner or his or her lessee or agent, enter on foot upon the property of another person for the sole purpose of retrieving a hunting dog. The person shall not remain on the property beyond the reasonable time necessary to retrieve the dog. In an action under section 73109 or 73110, the burden of showing that the property owner or his or her lessee or agent previously prohibited entry under this subsection is on the plaintiff or prosecuting attorney, respectively.

(5) Consent to enter or remain upon the property of another person pursuant to this section may be given orally or in writing. The consent may establish conditions for entering or remaining upon that property. Unless prohibited in the written consent, a written consent may be amended or revoked orally. If the owner or his or her lessee or agent requires all persons entering or remaining upon the property to have written consent, the presence of the person on the property without written consent is prima facie evidence of unlawful entry.

### 324.73109 Violation of part; cause of action by property owner. [M.S.A. 13A.73109]

Sec. 73109. The owner of property on which a violation of this part is committed, or his or her lessee, may bring a cause of action against a person who violates this part for \$250.00 or actual property damages, whichever is greater, and actual and reasonable attorney fees.

### 324.73110 Violation as misdemeanor; penalties. [M.S.A. 13A.73110]

Sec. 73110. (1) Except as provided in subsection (2), a person who violates this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$100.00 or more than \$500.00, or both.

(2) A person convicted of a second or subsequent violation of this part occurring within 3 years of a previous violation of this part shall be punished by imprisonment for not more than 90 days or a fine of not less than \$250.00 or more than \$1,000.00, or both. In addition, the court shall order the person's license revoked if the person is licensed to hunt, fish, or trap in this state, and shall order the person not to seek or possess a license for the remainder of the calendar year in which the person is convicted and during at least 1 succeeding calendar year. This subsection does not apply after September 30, 2001.

(3) This subsection applies beginning October 1, 2001. A person convicted of a second or subsequent violation of this part occurring within 3 years of a previous violation of this part shall be punished by imprisonment for not more than 90 days or a fine of not less than \$100.00 or more than \$1,000.00, or both. In addition, the court may order the person's license revoked if the person is licensed to hunt, fish, or trap in this state, and may order the person not to seek or possess a license for not more than 3 succeeding calendar years.

(4) The court may order a person convicted of violating this part to pay the costs of prosecution.

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(5) The following may be seized and forfeited in the same manner as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709:

(a) A protected animal, a fur-bearing animal, game, or fish taken while committing any violation of this part.

(b) Property in the possession of the defendant while committing a second or subsequent violation of this part occurring within 3 years of a previous violation of this part. This subdivision does not apply to either of the following:

(i) Electronic hunting-dog-retrieval equipment.

(ii) A living or dead animal of any kind not described in subdivision (a).

(6) The court shall order a person convicted of violating this part to make restitution for any damage arising out of the violation, including, but not limited to, reimbursing this state for the value of any protected animal, fur-bearing animal, game, or fish taken while violating this part as provided in section 40119. However, the value of fish shall be determined as provided in section 48740.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 768 of the 89th Legislature is enacted into law.

Approved January 19, 1999.

Filed with Secretary of State January 20, 1999.

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**Compiler's note:** Senate Bill No. 768, referred to in enacting section 1, was filed with the Secretary of State January 20, 1999, and became P.A. 1998, No. 547, Eff. Mar. 23, 1999.

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