

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 226

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 45901, 45906, 45908, 48701, 48735, and 48738 (MCL 324.45901, 324.45906, 324.45908, 324.48701, 324.48735, and 324.48738), sections 45901, 45906, 45908, 48735, and 48738 as added by 1995 PA 57 and section 48701 as amended by 2002 PA 434, and by adding part 413.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 413 TRANSGENIC AND NONNATIVE ORGANISMS

2 Sec. 41301. As used in this part:

3 (a) "Genetically engineered" refers to a fish whose genome,
4 chromosomal or extrachromosomal, is modified permanently and
5 heritably, using recombinant nucleic acid techniques, or the
6 progeny thereof.

7 (b) "Prohibited species" means any of the following or the

1 eggs thereof:

2 (i) Bighead carp (*Hypophthalmichthys nobilis*) or a hybrid or
3 genetically engineered variant thereof.

4 (ii) Bitterling (*Rhodeus sericeus*) or a hybrid or genetically
5 engineered variant thereof.

6 (iii) Black carp (*Mylopharyngodon piceus*) or a hybrid or
7 genetically engineered variant thereof.

8 (iv) Grass carp (*Ctenopharyngodon idellus*) or a hybrid or
9 genetically engineered variant thereof.

10 (v) Ide (*Leuciscus idus*) or a hybrid or genetically
11 engineered variant thereof.

12 (vi) Japanese weatherfish (*Misgurnus anguillicaudatus*) or a
13 hybrid or genetically engineered variant thereof.

14 (vii) Rudd (*Scardinius erythrophthalmus*) or a hybrid or
15 genetically engineered variant thereof.

16 (viii) Silver carp (*Hypophthalmichthys molitrix*) or a hybrid
17 or genetically engineered variant thereof.

18 (ix) A fish of the snakehead family (family *Channidae*) or
19 genetically engineered variant.

20 (x) Tench (*Tinca tinca*) or a hybrid or genetically engineered
21 variant thereof.

22 (c) "Recombinant nucleic acid techniques" means laboratory
23 techniques through which genetic material is isolated and
24 manipulated in vitro and then inserted into an organism.

25 Sec. 41303. A person shall not possess or release a live
26 prohibited species.

27 Sec. 41305. (1) Unless authorized by a permit issued by the

1 department under this section or section 48735, a person shall
2 not knowingly release or allow to be released into this state any
3 of the following that is not naturalized in the location of
4 release:

5 (a) A genetically engineered fish.

6 (b) A nonnative fish.

7 (2) A person shall apply for a permit under subsection (1) on
8 a form developed by the department. The application shall be
9 accompanied by a fee established by the department based on the
10 cost of administering this part.

11 (3) The department may revoke or modify a permit issued under
12 this section after providing an opportunity for a hearing under
13 the administrative procedures act of 1969, 1969 PA 306,
14 MCL 24.201 to 24.328.

15 Sec. 41307. The department shall promulgate rules under the
16 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
17 24.328, necessary to implement this part.

18 Sec. 41309. A person who violates section 41303 or who
19 knowingly violates section 41305 or a permit issued under section
20 41305 is guilty of a felony punishable by imprisonment for not
21 more than 5 years or a fine of not more than \$250,000.00, or
22 both. In addition, the person is liable for any damages to
23 natural resources resulting from the violation, including, but
24 not limited to, costs incurred to prevent or minimize such
25 damages.

26 Sec. 45901. As used in this part: ~~—~~"game

27 (a) "Game fish" includes all species of fish in the families

1 of salmonidae (trout and salmon), thymallidae (grayling),
2 esocidae (northern pike and muskellunge), serranidae (white bass
3 and striped bass), centrarchidae (bass, bluegill, and crappie),
4 percidae (perch and walleye), acipenseridae (sturgeon),
5 ictaluridae (catfish), and coregonidae (whitefish).

6 (b) "Genetically engineered" refers to a fish whose genome,
7 chromosomal or extrachromosomal, is modified permanently and
8 heritably, using recombinant nucleic acid techniques.

9 (c) "Recombinant nucleic acid techniques" means laboratory
10 techniques through which genetic material is isolated and
11 manipulated in vitro and then inserted into an organism.

12 Sec. 45906. (1) A person shall not import into this state
13 any live game fish, ~~or~~ including viable eggs of any game fish,
14 without a license as provided for in this part. A license under
15 this subsection does not apply to a genetically engineered
16 variant of a live game fish species unless the genetically
17 engineered variant is specifically identified in the license.

18 (2) The department may promulgate rules under this part to
19 prohibit or restrict the importation of any species of game fish
20 or ~~any~~ other ~~species of~~ fish when the importation of that
21 species would endanger the public fishery resources of this
22 state. A prohibition or restriction in rules promulgated under
23 this subsection applies to a genetically engineered variant of a
24 fish species identified in the prohibition or restriction unless
25 the prohibition or restriction specifically provides otherwise.
26 A prohibition or restriction in rules promulgated under this
27 subsection may be limited to a genetically engineered fish.

1 Sec. 45908. (1) ~~A~~ **Except as provided in subsection (2), a**
2 **person ~~violating~~ who violates** this part or the rules
3 promulgated under this part is guilty of a misdemeanor ~~—~~
4 punishable by imprisonment for not more than 90 days ~~—~~ or a
5 fine of not more than \$100.00, or both. In addition to the
6 penalty, any license issued under this part may be revoked.

7 (2) **A person who knowingly violates section 45906 or a rule**
8 **promulgated under section 45906 with respect to a genetically**
9 **engineered fish or with respect to any fish species that is not**
10 **naturalized in this state is guilty of a misdemeanor punishable**
11 **by imprisonment for not more than 90 days or a fine of not more**
12 **than \$1,000.00, or both. In addition, any license issued to the**
13 **person under this part may be revoked, and the person is liable**
14 **for damages to natural resources resulting from the violation,**
15 **including, but not limited to, costs incurred to prevent or**
16 **minimize such damages.**

17 (3) Any license issued under this part may be suspended or
18 revoked by the department after a hearing, upon reasonable
19 notice, when any of the operations under it fail to comply with
20 the requirements of this part or the rules promulgated under this
21 part. Whenever any license is suspended or revoked, the fish
22 held under the license shall be disposed of only in a manner
23 approved by the department.

24 Sec. 48701. As used in this part:

25 (a) "Amphibian" means any frog, toad, or salamander of the
26 class amphibia.

27 (b) "Crustacea" means any freshwater crayfish, shrimp, or

1 prawn of the order decapoda.

2 (c) "Game fish" includes all of the following:

3 (i) Mackinaw or lake trout (~~Christivomer~~ **Salvelinus**
4 namaycush).

5 (ii) Brook or speckled trout (Salvelinus fontinalis).

6 (iii) Brown and Loch Leven trout (Salmo trutta).

7 (iv) Rainbow and steelhead trout (~~Salmo gairdnerii~~
8 **Oncorhynchus mykiss**).

9 (v) Landlocked salmon (Salmo salar sebago).

10 (vi) Grayling (Thymallus ~~tricolor~~ and ~~Thymallus montanus~~
11 **arcticus**).

12 (vii) Largemouth black bass (~~Huro~~ **Micropterus** salmoides).

13 (viii) Smallmouth black bass (Micropterus dolomieu).

14 (ix) Bluegill (Lepomis macrochirus).

15 (x) Pumpkinseed or common sunfish (Lepomis gibbosus).

16 (xi) Black crappie and white crappie, also known as calico
17 bass and strawberry bass (Pomoxis ~~sparoides~~ and ~~pomoxis~~
18 **nigromaculatus** and **Pomoxis** annularis).

19 (xii) Yellow perch, commonly called perch (Perca
20 flavescens).

21 (xiii) Pike-perch, commonly called walleyed pike
22 (Stizostedion vitreum).

23 (xiv) Northern pike, also known as grass pike or pickerel
24 (Esox lucius).

25 (xv) Muskellunge (Esox masquinongy).

26 (xvi) Sturgeon (Acipenser fulvescens).

27 (xvii) Splake (Salvelinus namaycush x Salvelinus

1 fontinalis).

2 (xviii) Coho salmon (*Oncorhynchus kisutch*).

3 (xix) Chinook (King) salmon (*Oncorhynchus tshawytscha*).

4 (xx) Pink salmon (*Oncorhynchus gorbuscha*).

5 (d) **"Genetically engineered" refers to a fish whose genome,**
6 **chromosomal or extrachromosomal, is modified permanently and**
7 **heritably, using recombinant nucleic acid techniques.**

8 (e) ~~(d)~~ "Inland waters of this state" means the waters
9 within the jurisdiction of the state except Saginaw river, Lakes
10 Michigan, Superior, Huron, and Erie, and the bays and the
11 connecting waters. The connecting waters between Lake Superior
12 and Lake Huron are that part of the Straits of St. Mary in this
13 state extending from a line drawn from Birch Point Range front
14 light to the most westerly point of Round Island, thence
15 following the shore of Round Island to the most northerly point
16 thereof, thence from the most northerly point of Round Island to
17 Point Aux Pins light, Ontario, to a line drawn due east and west
18 from the most southerly point of Little Lime Island. The
19 connecting waters of Lake Huron and Lake Erie are all of the
20 St. Clair river, all of Lake St. Clair, and all of the Detroit
21 river extending from Fort Gratiot light in Lake Huron to a line
22 extending due east and west of the most southerly point of
23 Celeron Island in the Detroit river.

24 (f) ~~(e)~~ "Mollusks" means any mollusk of the classes
25 bivalvia and gastropoda.

26 (g) ~~(f)~~ "Nongame fish" includes all kinds of fish except
27 game fish.

1 (h) ~~(g)~~ "Nonresident" means a person who is not a
2 resident.

3 (i) ~~(h)~~ "Nontrout streams" means all streams or portions of
4 streams other than trout streams.

5 (j) ~~(i)~~ "Open season" means the time during which fish may
6 be legally taken or killed and includes both the first and last
7 day of the season or period designated by this part.

8 (k) **"Recombinant nucleic acid techniques" means laboratory**
9 **techniques through which genetic material is isolated and**
10 **manipulated in vitro and then inserted into an organism.**

11 (l) ~~(j)~~ "Reptiles" means any turtle, snake, or lizard of
12 the class reptilia.

13 (m) ~~(k)~~ "Resident" means either of the following:

14 (i) A person who resides in a settled or permanent home or
15 domicile with the intention of remaining in this state.

16 (ii) A student who is enrolled in a full-time course at a
17 college or university within this state.

18 (n) ~~(l)~~ "Trout lake" means a lake designated by the
19 department in which brook trout, brown trout, or rainbow trout
20 are the predominating species of game fish. ~~found in the lake.~~
21 The department may designate certain trout lakes in which certain
22 species of fish are not desired and in which it is unlawful to
23 use live fish of any kind for bait.

24 (o) ~~(m)~~ "Trout stream" means any stream or portion of a
25 stream that contains a significant population of any species of
26 trout or salmon as determined by the department. The department
27 shall designate not more than 212 miles of trout streams in which

1 only lures or baits as the department prescribes may be used in
2 fishing, and the department may prescribe the size and number of
3 fish that may be taken from those trout streams. The department
4 shall not restrict children under 12 years old from taking a
5 minimum of 1 fish, except for sturgeon (*Acipenser fulvescens*), in
6 any trout stream. Any trout stream in a county that includes a
7 city with a population of 750,000 or more shall be so
8 designated. In addition, the department shall issue an order
9 adopting criteria for determining which trout streams should be
10 so designated. Before the department issues the order, the
11 department shall submit the proposed order to the commission.
12 The commission shall receive public comment on the proposed
13 order. The department shall consider any guidance provided by
14 the commission on the proposed order and may make changes to the
15 proposed order based on that guidance.

16 Sec. 48735. (1) ~~A~~ **Subject to subsection (2),** a person
17 shall not take from any of the inland waters of this state any
18 fish in any manner for the purpose of fish culture or scientific
19 investigation without first obtaining a permit from the
20 department, except that a person who is operating a private fish
21 pond may take fish from his or her own pond for the purpose of
22 propagation, scientific investigation, or sale under part 459.

23 (2) The department may issue permits to possess live game
24 fish in public or private ponds, pools, or aquariums under rules
25 and regulations as the department prescribes. **This subsection is**
26 **subject to subsection (5).**

27 (3) The department may cause to be taken from the inland

1 waters of this state any species of fish for the purpose of
2 obtaining spawn for fish culture or scientific investigation or
3 for the protection of the inland waters from ecological damage or
4 imbalance. In addition, the department may cause to be taken
5 from the inland waters of this state species of fish that are not
6 required to maintain the fishery resources of the inland waters.
7 All fish taken under this ~~section~~ **subsection** shall be taken
8 under the supervision of a deputy of the department appointed for
9 that purpose and in accordance with the regulations of the
10 department of agriculture, and the fish may be sold or
11 transferred by the department.

12 (4) A person shall not import or bring any live game fish,
13 ~~or~~ **including** viable eggs of any game fish, from outside of this
14 state except under a permit from the department or under part 459
15 and the rules promulgated in accordance with that part. A person
16 shall not plant any spawn, fry, or fish of any kind in any of the
17 public waters of this state or any other waters under the
18 jurisdiction of this state without first obtaining a permit from
19 the department that states the species, number, and approximate
20 size or age of the spawn, fry, or fish to be planted and the name
21 and location of the waters where the spawn, fry, or fish shall be
22 planted. A permit is not required to plant spawn, fry, or fish
23 furnished by the federal or state government. ~~All permits~~ **This**
24 **subsection is subject to subsection (5).**

25 (5) A permit under subsection (2) or (4) does not include a
26 genetically engineered variant of a fish species identified in
27 the permit unless the genetically engineered variant is

1 specifically identified in the permit. A permit under subsection
2 (2) or (4) may be limited to a genetically engineered fish.

3 (6) A permit under this section shall be exhibited upon the
4 request of any law enforcement officer.

5 (7) ~~(2)~~ The department shall annually report to the
6 legislature all fish sold or transferred pursuant to this part.

7 Sec. 48738. (1) A person who violates this part or rules or
8 orders issued to implement this part, if a penalty is not
9 otherwise provided for that violation in this section, is guilty
10 of a misdemeanor ~~—~~ punishable by imprisonment for not more than
11 90 days ~~—~~ or a fine of not more than \$500.00, or both.

12 (2) A person convicted of using dynamite, nitroglycerin,
13 lime, electricity, any other explosive substance, or poison for
14 the purpose of taking or killing fish, convicted of using nets
15 not authorized by law for taking game fish, or convicted of
16 buying or selling game fish or any parts of game fish is guilty
17 of a misdemeanor ~~—~~ punishable by imprisonment for not more than
18 90 days ~~—~~ or a fine of not less than \$250.00 or more than
19 \$1,000.00, or both.

20 (3) A person who takes or possesses sturgeon in violation of
21 this part or rules or orders issued to implement this part is
22 guilty of a misdemeanor ~~—, punishable~~ **and shall be punished** by
23 imprisonment for not less than 30 days or more than 180 days ~~—~~
24 ~~or~~ **and** a fine of not less than \$500.00 or more than \$2,000.00,
25 or both, and the costs of prosecution.

26 (4) A person who knowingly violates section 48735(2) or (4)
27 or a permit issued under section 48735(2) or (4) with respect to

1 a genetically engineered variant of a fish species is guilty of a
2 felony punishable by imprisonment for not more than 5 years or a
3 fine of not more than \$250,000.00, or both. In addition, the
4 person is liable for any damages to the natural resources
5 resulting from the violation, including, but not limited to,
6 costs incurred to prevent or minimize such damages.

7 (5) ~~(4)~~ If a person is convicted of a violation of this
8 part or rules or orders issued to implement this part and it is
9 alleged in the complaint and proved or admitted at trial or
10 ascertained by the court at the time of sentencing that the
11 person ~~had~~ **has** been previously convicted 3 or more times of a
12 violation of this part within the 5 years immediately preceding
13 the last violation of this part, the person is guilty of a
14 misdemeanor ~~—~~ punishable by imprisonment for not more than 90
15 days ~~—~~ or a fine of not more than \$1,000.00, or both, and the
16 costs of prosecution. This subsection does not apply to the
17 following violations:

18 (a) Failing to possess or display a valid fishing license or
19 trout and salmon license issued pursuant to part 435.

20 (b) Taking or possessing an overlimit of bluegill, sunfish,
21 crappie, perch, or nongame fish.

22 (c) Taking or possessing not more than 5 undersized fish.

23 (d) Fishing with too many lines.

24 (e) Failing to attach the person's name and address to
25 tip-ups or minnow traps.

26 (f) Fishing with lines not under immediate control.

27 (6) ~~(5)~~ In addition to the penalties provided in this

1 section, a fishing license issued to a person sentenced pursuant
2 to ~~subsections~~ **subsection** (2), (3), ~~or~~ (4), **or (5)** shall be
3 revoked, and the person shall not be issued a license during the
4 remainder of the year in which convicted or during the next 3
5 succeeding license years.