

Act No. 270
Public Acts of 2003
Approved by the Governor
January 8, 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003**

Introduced by Senators Hammerstrom, Birkholz, Sanborn, Jacobs, Goschka, Cropsey and Sikkema

ENROLLED SENATE BILL No. 226

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 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:

PART 413 TRANSGENIC AND NONNATIVE ORGANISMS

Sec. 41301. As used in this part:

- (a) "Genetically engineered" refers to a fish whose genome, chromosomal or extrachromosomal, is modified permanently and heritably, using recombinant nucleic acid techniques, or the progeny thereof.
- (b) "Prohibited species" means any of the following or the eggs thereof:
- (i) Bighead carp (*Hypophthalmichthys nobilis*) or a hybrid or genetically engineered variant thereof.
 - (ii) Bitterling (*Rhodeus sericeus*) or a hybrid or genetically engineered variant thereof.
 - (iii) Black carp (*Mylopharyngodon piceus*) or a hybrid or genetically engineered variant thereof.
 - (iv) Grass carp (*Ctenopharyngodon idellus*) or a hybrid or genetically engineered variant thereof.
 - (v) Ide (*Leuciscus idus*) or a hybrid or genetically engineered variant thereof.
 - (vi) Japanese weatherfish (*Misgurnus anguillicaudatus*) or a hybrid or genetically engineered variant thereof.
 - (vii) Rudd (*Scardinius erythrophthalmus*) or a hybrid or genetically engineered variant thereof.
 - (viii) Silver carp (*Hypophthalmichthys molitrix*) or a hybrid or genetically engineered variant thereof.
 - (ix) A fish of the snakehead family (family Channidae) or genetically engineered variant.
 - (x) Tench (*Tinca tinca*) or a hybrid or genetically engineered variant thereof.
- (c) "Recombinant nucleic acid techniques" means laboratory techniques through which genetic material is isolated and manipulated in vitro and then inserted into an organism.

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

Sec. 41305. (1) Unless authorized by a permit issued by the department under this section or section 48735, a person shall not knowingly release or allow to be released into this state any of the following that is not naturalized in the location of release:

- (a) A genetically engineered fish.
- (b) A nonnative fish.

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

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

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

Sec. 41309. A person who violates section 41303 or who knowingly violates section 41305 or a permit issued under section 41305 is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$250,000.00, or both. In addition, the person 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.

Sec. 45901. As used in this part:

(a) "Game fish" includes all species of fish in the families of salmonidae (trout and salmon), thymallidae (grayling), esocidae (northern pike and muskellunge), serranidae (white bass and striped bass), centrarchidae (bass, bluegill, and crappie), percidae (perch and walleye), acipenseridae (sturgeon), ictaluridae (catfish), and coregonidae (whitefish).

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

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

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

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

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

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

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

Sec. 48701. As used in this part:

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

(b) "Crustacea" means any freshwater crayfish, shrimp, or prawn of the order decapoda.

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

(i) Mackinaw or lake trout (*Salvelinus namaycush*).

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

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

(iv) Rainbow and steelhead trout (*Oncorhynchus mykiss*).

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

(vi) Grayling (*Thymallus arcticus*).

(vii) Largemouth black bass (*Micropterus salmoides*).

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

(ix) Bluegill (*Lepomis macrochirus*).

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

(xi) Black crappie and white crappie, also known as calico bass and strawberry bass (*Pomoxis nigromaculatus* and *Pomoxis annularis*).

(xii) Yellow perch, commonly called perch (*Perca flavescens*).

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

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

(xv) Muskellunge (*Esox masquinongy*).

(xvi) Sturgeon (*Acipenser fulvescens*).

(xvii) Splake (*Salvelinus namaycush* x *Salvelinus fontinalis*).

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

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

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

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

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

(f) "Mollusks" means any mollusk of the classes bivalvia and gastropoda.

(g) "Nongame fish" includes all kinds of fish except game fish.

(h) "Nonresident" means a person who is not a resident.

(i) "Nontrot streams" means all streams or portions of streams other than trout streams.

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

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

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

(m) "Resident" means either of the following:

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

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

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

(o) "Trout stream" means any stream or portion of a stream that contains a significant population of any species of trout or salmon as determined by the department. The department shall designate not more than 212 miles of trout streams in which only lures or baits as the department prescribes may be used in fishing, and the department may prescribe the size and number of fish that may be taken from those trout streams. The department shall not restrict

children under 12 years old from taking a minimum of 1 fish, except for sturgeon (*Acipenser fulvescens*), in any trout stream. Any trout stream in a county that includes a city with a population of 750,000 or more shall be so designated. In addition, the department shall issue an order adopting criteria for determining which trout streams should be so designated. Before the department issues the order, the department shall submit the proposed order to the commission. The commission shall receive public comment on the proposed order. The department shall consider any guidance provided by the commission on the proposed order and may make changes to the proposed order based on that guidance.

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

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

(3) The department may cause to be taken from the inland waters of this state any species of fish for the purpose of obtaining spawn for fish culture or scientific investigation or for the protection of the inland waters from ecological damage or imbalance. In addition, the department may cause to be taken from the inland waters of this state species of fish that are not required to maintain the fishery resources of the inland waters. All fish taken under this subsection shall be taken under the supervision of a deputy of the department appointed for that purpose and in accordance with the regulations of the department of agriculture, and the fish may be sold or transferred by the department.

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

(5) A permit under subsection (2) or (4) does not include a genetically engineered variant of a fish species identified in the permit unless the genetically engineered variant is specifically identified in the permit. A permit under subsection (2) or (4) may be limited to a genetically engineered fish.

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

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

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

(2) A person convicted of using dynamite, nitroglycerin, lime, electricity, any other explosive substance, or poison for the purpose of taking or killing fish, convicted of using nets not authorized by law for taking game fish, or convicted of buying or selling game fish or any parts of game fish is guilty of a misdemeanor punishable 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.

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

(4) A person who knowingly violates section 48735(2) or (4) or a permit issued under section 48735(2) or (4) with respect to a genetically engineered variant of a fish species is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$250,000.00, or both. In addition, the person is liable for any damages to the natural resources resulting from the violation, including, but not limited to, costs incurred to prevent or minimize such damages.

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

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

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

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

(d) Fishing with too many lines.

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

(f) Fishing with lines not under immediate control.

(6) In addition to the penalties provided in this section, a fishing license issued to a person sentenced pursuant to subsection (2), (3), (4), or (5) shall be revoked, and the person shall not be issued a license during the remainder of the year in which convicted or during the next 3 succeeding license years.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved

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Governor