

Act No. 537  
Public Acts of 2014  
Approved by the Governor  
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**STATE OF MICHIGAN  
97TH LEGISLATURE  
REGULAR SESSION OF 2014**

Introduced by Senators Kowall, Pavlov, Walker, Meekhof and Bieda

# **ENROLLED SENATE BILL No. 795**

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 protect the people's right to hunt and fish; 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 41301, 41302, 41303, 41305, and 41306 (MCL 324.41301, 324.41302, 324.41303, 324.41305, and 324.41306), section 41301 as amended by 2014 PA 358 and section 41302 as added and sections 41303, 41305, and 41306 as amended by 2009 PA 52, and by adding sections 41302a and 41310.

*The People of the State of Michigan enact:*

Sec. 41301. (1) As used in this part:

- (a) "Amphibian" means any frog, toad, or salamander of the class Amphibia.
- (b) "Aquatic", except as used in subdivision (p), describes an amphibian, crustacean, fish, mollusk, reptile, wiggler, or aquatic plant.
- (c) "Crustacean" means freshwater crayfish, shrimp, or prawn of the order Decapoda.
- (d) "Genetically engineered" refers to an organism whose genome, chromosomal or extrachromosomal, is modified permanently and heritably, using recombinant nucleic acid techniques, or the progeny of such an organism.
- (e) "Introduce", with reference to an organism, means to knowingly and willfully stock, place, plant, release, or allow the release of the organism in this state at any specific location where the organism is not already naturalized.
- (f) "Mollusk" means any mollusk of the classes Bivalvia and Gastropoda.
- (g) "Native" means indigenous to any location in this state.
- (h) "Nonaquatic" describes a bird, insect other than a wiggler, or mammal.
- (i) "Nonnative" means not native.
- (j) "Permitted aquatic species" means a species listed as provided in section 41302a.

(k) “Prohibited species”, subject to section 41302, means any of the following:

(i) Any of the following prohibited aquatic plant species, including a hybrid or genetically engineered variant of the species or a fragment, including a seed or other propagule, of the species or of a hybrid or genetically engineered variant:

- (A) African oxygen weed (*Lagarosiphon major*).
- (B) Brazilian elodea (*Egeria densa*).
- (C) Cyllindro (*Cylindrospermopsis raciborskii*).
- (D) European frogbit (*Hydrocharis morsus-ranae*).
- (E) Fanwort (*Cabomba caroliniana*).
- (F) Giant salvinia (*Salvinia molesta*, *auriculata*, *biloba*, or *herzogii*).
- (G) Hydrilla (*Hydrilla verticillata*).
- (H) Parrot’s feather (*Myriophyllum aquaticum*).
- (I) Starry stonewort (*Nitellopsis obtusa*).
- (J) Water chestnut (*Trapa natans*).
- (K) Yellow floating heart (*Nymphoides peltata*).

(ii) Any of the following prohibited terrestrial plant species, including a hybrid or genetically engineered variant of the species or a fragment, including a seed or other propagule, of the species or of a hybrid or genetically engineered variant:

- (A) Giant hogweed (*Heracleum mantegazzianum*).
- (B) Japanese knotweed (*Fallopia japonica*).

(iii) The following prohibited bird species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant: Eurasian collared dove (*Streptopelia decaocto*).

(iv) The following prohibited crustacean species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant: rusty crayfish (*Orconectes rusticus*).

(v) Any of the following prohibited fish species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:

- (A) Bighead carp (*Hypophthalmichthys nobilis*).
- (B) Bitterling (*Rhodeus sericeus*).
- (C) Black carp (*Mylopharyngodon piceus*).
- (D) Eurasian ruffe (*Gymnocephalus cernuus*).
- (E) Grass carp (*Ctenopharyngodon idellus*).
- (F) Ide (*Leuciscus idus*).
- (G) Japanese weatherfish (*Misgurnus anguillicaudatus*).
- (H) Round goby (*Neogobius melanostomus*).
- (I) Rudd (*Scardinius erythrophthalmus*).
- (J) Silver carp (*Hypophthalmichthys molitrix*).
- (K) A fish of the snakehead family (family *Channidae*).
- (L) Tench (*Tinca tinca*).
- (M) Tubenose goby (*Proterorhinus marmoratus*).

(vi) Any of the following prohibited insect species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:

- (A) Asian longhorned beetle (*Anoplophora glabripennis*).
- (B) Emerald ash borer (*Agrilus planipennis*).

(vii) The following prohibited mammal species, including a hybrid or genetically engineered variant: nutria (*Myocastor coypus*).

(viii) Any of the following prohibited mollusk species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:

- (A) Brown garden snail (*Helix aspersa*).
- (B) Carthusian snail (*Monacha cartusiana*).
- (C) Giant African snail (*Achatina fulica*).

- (D) Girdled snail (*Hygromia cinctella*).
- (E) Heath snail (*Xerolenta obvia*).
- (F) Wrinkled dune snail (*Candidula intersecta*).

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

(m) “Relevant commission”, “relevant department”, or “relevant director” means the following:

(i) With respect to a species other than a plant or an insect, except a wiggler, the natural resources commission, department of natural resources, or the director of the department of natural resources, respectively.

(ii) With respect to a plant species or an insect species, other than a wiggler, the commission of agriculture and rural development, the department of agriculture and rural development, or the director of the department of agriculture and rural development, respectively.

(n) “Reptile” means any turtle, snake, or lizard of the class Reptilia.

(o) “Restricted species”, subject to section 41302, means any of the following:

(i) Any of the following restricted aquatic plant species, including a hybrid or genetically engineered variant of the species or a fragment, including a seed or other propagule, of the species or of a hybrid or genetically engineered variant:

- (A) Curly leaf pondweed (*Potamogeton crispus*).
- (B) Eurasian watermilfoil (*Myriophyllum spicatum*).
- (C) Flowering rush (*Butomus umbellatus*).
- (D) Phragmites or common reed (*Phragmites australis*).

(E) Purple loosestrife (*Lythrum salicaria*), except that cultivars of purple loosestrife developed and recognized to be sterile and approved by the director of the department of agriculture and rural development under section 16a of the insect pest and plant disease act, 1931 PA 189, MCL 286.216a, are not a restricted species.

(ii) The following restricted terrestrial plant species, including a hybrid or genetically engineered variant of the species or a fragment, including a seed or other propagule, of the species or of a hybrid or genetically engineered variant: autumn olive (*Elaeagnus umbellata*).

(iii) Any of the following restricted mollusk species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:

- (A) Quagga mussel (*Dreissena bugensis*).
- (B) Zebra mussel (*Dreissena polymorpha*).
- (p) “Wiggler” means an aquatic egg, nymph, or larva of an insect.
- (2) For the purposes of this part:

(a) A person is not considered to possess a live organism simply because the organism is present on land or in waters owned by that person unless the person has knowingly introduced that live organism on that land or in those waters.

(b) A person is not considered to possess a live organism if the organism was obtained from the environment and the person only possesses the organism at the specific location at which it was obtained from the environment.

(c) A person is not considered to possess a live organism if the possession is for the purpose of promptly destroying the organism.

Sec. 41302. (1) The relevant commission may by order add to or delete a species from the list of prohibited species or restricted species under section 41301. Before the natural resources commission issues an order under this subsection, it shall consult with the department of agriculture and rural development. Before the commission of agriculture and rural development issues an order under this subsection, it shall consult with the department of natural resources. After the consultation, and at least 30 days before the relevant commission issues the order, the relevant department shall post a copy of the proposed order on the relevant department’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.

(2) The relevant commission shall list a nonaquatic species as a prohibited species or restricted species if the relevant commission determines the following:

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

(i) The organism is not native.

(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 nonaquatic restricted species, all of the following requirements are met:

(i) The organism is not native.

(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.

(3) The relevant commission shall list an aquatic species as a prohibited species or restricted species if the relevant commission determines the following based on a review by the relevant department:

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

(i) The organism is not native or is genetically engineered.

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

(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 an aquatic restricted species, all of the following requirements are met:

(i) The organism is not native.

(ii) The organism is naturalized 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.

(4) The following apply to a review by the relevant department of an aquatic species for listing as a prohibited species or restricted species under subsection (3):

(a) By 1 year after the effective date of the amendatory act that added this subsection, the relevant department shall review each aquatic species listed as a prohibited species or restricted species on the effective date of the amendatory act that added this subsection.

(b) By 1 year after the effective date of the amendatory act that added this subsection, the relevant department shall review each aquatic animal listed as injurious wildlife under the Lacey act, 16 USC 3371 to 3378, and each aquatic plant designated as a noxious weed under the plant protection act, 7 USC 7701 to 7786, for listing as a prohibited species or restricted species.

(c) The relevant department shall review new listings or delistings on the federal lists identified under subdivision (b) within 180 days after the listing or delisting.

(d) The relevant department shall review each aquatic species that has the potential to harm human health or natural, agricultural, or silvicultural resources for listing as a prohibited species or restricted species even if the species is not currently on either federal list described in subdivision (b).

(e) The relevant department may review a previously unreviewed aquatic species petitioned for listing as a permitted species under section 41302a(5) for which the risk assessment process under section 41302a(2) or (3) indicated a high invasive species risk.

(f) The relevant department may review other aquatic species for listing as prohibited or restricted species.

(5) The relevant director may issue an emergency order designating an organism as a prohibited species or restricted species if the organism has the potential to harm human health or to severely harm natural, agriculture, or silvicultural

resources. An emergency order is effective for not longer than 90 days. The relevant department shall do all of the following:

(a) Post a proposed emergency order on its website and otherwise publicize the proposed emergency order in a manner that ensures that interested persons are provided notice of the proposed emergency order, the reasons for the emergency order, and the proposed effective date of the order.

(b) Provide a copy of the proposed emergency order to each member of the standing committees of the senate and the house of representatives that consider legislation pertaining to conservation, the environment, recreation, tourism, or natural resources.

(c) Post the final emergency order on its website.

(6) The relevant department may issue an order setting forth the conditions under which naturalized organisms of an aquatic restricted species may be harvested, possessed, and transported.

Sec. 41302a. (1) By 2 years after the effective date of this section, the department of natural resources and the department of agriculture and rural development, after consultation and notice in the same manner as required of the respective commission under section 41302(1), shall each create a permitted species list for aquatic species for which it is the relevant department. Together, these lists compose the permitted aquatic species list. The initial permitted aquatic species list shall consist of all of the following:

(a) All species on the list of approved species for aquaculture under section 5 of the Michigan aquaculture development act, 1996 PA 199, MCL 286.875, on the effective date of this section or that are approved under a research permit under section 8 of the Michigan aquaculture development act, 1996 PA 199, MCL 286.878, on the effective date of this section.

(b) All native aquatic species, other than aquatic plants, that by the effective date of this section were, as live organisms, lawfully in commercial trade in this state. Within 1 year after the effective date of this section, the department of natural resources, in consultation with affected industries, shall determine which aquatic species qualify under this subdivision.

(c) All nonnative aquatic species, other than aquatic plants, that, by the effective date of this section, were, as live organisms, lawfully in wide commercial trade in this state for at least 5 years, if there is no evidence of the species causing harm to human health or natural, agricultural, or silvicultural resources in the Great Lakes region. For the purposes of this subdivision and subdivision (d), within 1 year after the effective date of this section, the department of natural resources, in consultation with affected industries, shall determine which aquatic species, other than aquatic plants, were, as live organisms, in commercial trade in this state by the effective date of this section and whether each of those species had, as live organisms, been in wide commercial trade in this state for at least 5 years.

(d) All nonnative aquatic species, other than aquatic plants, that, by the effective date of this section, were, as live organisms, lawfully in commercial trade in this state, that do not meet the requirements of subdivision (c), but that are approved by the department of natural resources based on a risk assessment under subsection (2). Within 2 years after the effective date of this section, the department of natural resources shall perform the risk assessment and approve or disapprove the assessed species for listing as permitted aquatic species.

(e) All aquatic plants, native or nonnative, that, by the effective date of this section, were, as live organisms, lawfully in commercial trade in this state. Within 1 year after the effective date of this section, the department of agriculture and rural development, in consultation with affected industries including the horticulture industry, shall determine which aquatic plants qualify under this subdivision.

(2) To perform a risk assessment on an aquatic species other than an aquatic plant, the department of natural resources shall use the risk assessment aquatic protocol developed by the United States fish and wildlife service, aquatic fisheries and resources program. The natural resources commission shall periodically review and may modify or replace the assessment protocol by order consistent with the purposes of this part.

(3) To perform a risk assessment on an aquatic plant, the department of agriculture and rural development shall use the plant protection and quarantine (PPQ) weed risk assessment protocol developed by the United States department of agriculture's plant protection and quarantine, plant epidemiology, and risk analysis laboratory, Raleigh, North Carolina. Each aquatic plant cultivar, variety, or hybrid shall be assessed separately. The commission of agriculture and rural development shall periodically review and may modify or replace the assessment protocol by order consistent with the purposes of this part.

(4) If an aquatic species that was not previously a prohibited or restricted species under this part does not pass the risk assessment for permitted species under this section and is reviewed under section 41302(4)(e) and placed on the prohibited species list or restricted species list, any person involved in the commercialization or sale of an aquatic species that possesses live organisms of that prohibited or restricted species shall be compensated at fair market value by this state for the loss of that species product in the person's possession in this state when the species was placed on the prohibited species list or restricted species list.

(5) Aquatic species that on the effective date of this section are, as live organisms, not in commercial trade in this state or are unknown to or unanticipated by the relevant department may be added to the permitted species list upon

evaluation using the risk assessment procedure described under subsection (2) or (3), as applicable. After the creation of the initial permitted species list, any person involved in the commercialization or sale of aquatic species may petition the relevant department to review and add a new aquatic species to the permitted species list for future commercialization and sale in this state. The petitioner has the burden of demonstrating that the species passes the risk assessment under subsection (2) or (3), as applicable. The petitioner shall provide information that is requested by the relevant department to perform the risk assessment. Any prior background materials generated as a result of a federal agency review and identified by the petitioner shall be considered by the department. The petitioner shall pay a reasonable fee that does not exceed the administrative costs for the relevant department to review the petitioned species. The relevant department may, but is not required to, review on its own initiative an aquatic species for placement on the permitted species list.

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 and rural development, 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) The possession is pursuant to a permit issued for education or research purposes by the relevant department under section 41306 or, if the prohibited species or restricted species is a plant species or an insect other than a wiggler, by the United States department of agriculture.

(e) The species is an aquatic restricted species and the person possesses the species in compliance with an order under section 41302(6).

(2) A person described in subsection (1)(b) or (c) shall notify the department of natural resources, the department of agriculture and rural development, 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.

(3) Before initial establishment of the permitted aquatic species list, a person shall not import, sell, or offer to sell any live aquatic species unless the live aquatic species, by the effective date of the 2014 amendatory act that added this subsection, was lawfully in commercial trade in this state. After the initial establishment of the permitted aquatic species list, a person shall not import, sell, or offer to sell any live aquatic species not listed on the permitted aquatic species list.

Sec. 41305. A person shall not introduce a prohibited species, a restricted species, a genetically engineered or nonnative bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant 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 a plant or an insect other than a wiggler, by a permit issued by the department of agriculture and rural development 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 to the relevant department for a permit that section 41303 or 41305 describes as being issued under this section. The application shall be submitted on a form developed by the relevant department. The application shall be accompanied by a fee based on the cost of administering this part. The relevant department 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 relevant department shall consider whether any application for a federal permit or approval for the genetically engineered organism has been granted or denied.

(3) The relevant department may revoke or modify a permit it has issued 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 relevant department shall administer and enforce this part. In addition, any peace officer may enforce the criminal provisions of this part.

Sec. 41310. A vehicle, equipment, or other property used in a criminal violation of this part or a permit issued under this part involving a prohibited species that is an aquatic species is subject to seizure and forfeiture as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

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 all of the following bills of the 97th Legislature are enacted into law:

- (a) Senate Bill No. 796.
- (b) Senate Bill No. 797.
- (c) Senate Bill No. 799.
- (d) Senate Bill No. 800.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Ray E. Randall*

Clerk of the House of Representatives

Approved .....

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Governor