

# SENATE BILL No. 1093

September 21, 2016, Introduced by Senator KOWALL and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending section 41302a (MCL 324.41302a), as added by 2014 PA  
537.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 41302a. (1) By ~~2 years after the effective date of this~~  
2 ~~section,~~ **APRIL 15, 2019**, the department of natural resources and  
3 the department of agriculture and rural development, after  
4 consultation and notice in the same manner as required of the  
5 respective commission under section 41302(1), shall each create a  
6 permitted species list for aquatic species for which it is the  
7 relevant department. Together, these lists compose the permitted

1 aquatic species list. The initial permitted aquatic species list  
2 shall consist of all of the following:

3 (a) All species on the list of approved species for  
4 aquaculture under section 5 of the Michigan aquaculture development  
5 act, 1996 PA 199, MCL 286.875, on ~~the effective date of this~~  
6 ~~section~~ **APRIL 15, 2015** or that are approved under a research permit  
7 under section 8 of the Michigan aquaculture development act, 1996  
8 PA 199, MCL 286.878, on ~~the effective date of this section~~. **APRIL**  
9 **15, 2015.**

10 (b) All native aquatic species, other than aquatic plants,  
11 that by ~~the effective date of this section~~ **APRIL 15, 2015** were, as  
12 live organisms, lawfully in commercial trade in this state. ~~Within~~  
13 ~~1 year after the effective date of this section,~~ **BY APRIL 15, 2016,**  
14 the department of natural resources, in consultation with affected  
15 industries, shall determine which aquatic species qualify under  
16 this subdivision.

17 (c) All nonnative aquatic species, other than aquatic plants,  
18 that ~~, by the effective date of this section,~~ **BY APRIL 15, 2015**  
19 were, as live organisms, lawfully in wide commercial trade in this  
20 state for at least 5 years, if there is no evidence of the species  
21 causing harm to human health or natural, agricultural, or  
22 silvicultural resources in the Great Lakes region. For the purposes  
23 of this subdivision and subdivision (d), ~~within 1 year after the~~  
24 ~~effective date of this section,~~ **BY APRIL 15, 2016,** the department  
25 of natural resources, in consultation with affected industries,  
26 shall determine which aquatic species ~~, other than aquatic plants,~~  
27 ~~were, as live organisms, in commercial trade in this state by the~~

1 ~~effective date of this section and whether each of those species~~  
2 ~~had, as live organisms, been in wide commercial trade in this state~~  
3 ~~for at least 5 years.~~**QUALIFY UNDER THIS SUBDIVISION.**

4 (d) All nonnative aquatic species, other than aquatic plants,  
5 that ~~, by the effective date of this section,~~**BY APRIL 15, 2015**  
6 were, as live organisms, lawfully in commercial trade in this  
7 state, that do not meet the requirements of subdivision (c), but  
8 that are approved by the department of natural resources based on a  
9 risk assessment under subsection (2). ~~Within 2 years after the~~  
10 ~~effective date of this section,~~**BY APRIL 15, 2019,** the department  
11 of natural resources shall perform the risk assessment and approve  
12 or disapprove the assessed species for listing as permitted aquatic  
13 species.

14 (e) All aquatic plants, native or nonnative, that ~~, by the~~  
15 ~~effective date of this section,~~**BY APRIL 15, 2015** were, as live  
16 organisms, lawfully in commercial trade in this state. ~~Within 1~~  
17 ~~year after the effective date of this section,~~**BY APRIL 15, 2016,**  
18 the department of agriculture and rural development, in  
19 consultation with affected industries including the horticulture  
20 industry, shall determine which aquatic plants qualify under this  
21 subdivision.

22 (2) To perform a risk assessment on an aquatic species other  
23 than an aquatic plant, the department of natural resources shall  
24 use the risk assessment aquatic protocol developed by the United  
25 States ~~fish and wildlife service,~~**FISH AND WILDLIFE SERVICE,**  
26 aquatic fisheries and resources program. The natural resources  
27 commission shall periodically review and may modify or replace the

1 assessment protocol by order consistent with the purposes of this  
2 part.

3 (3) To perform a risk assessment on an aquatic plant, the  
4 department of agriculture and rural development shall use the plant  
5 protection and quarantine (PPQ) weed risk assessment protocol  
6 developed by the United States ~~department of agriculture's plant~~  
7 ~~protection and quarantine, plant epidemiology, and risk analysis~~  
8 ~~laboratory, DEPARTMENT OF AGRICULTURE'S PLANT PROTECTION AND~~  
9 **QUARANTINE, PLANT EPIDEMIOLOGY, AND RISK ANALYSIS LABORATORY,**  
10 Raleigh, North Carolina. Each aquatic plant cultivar, variety, or  
11 hybrid shall be assessed separately. The commission of agriculture  
12 and rural development shall periodically review and may modify or  
13 replace the assessment protocol by order consistent with the  
14 purposes of this part.

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

26 (5) Aquatic species that on ~~the effective date of this section~~  
27 **APRIL 15, 2015** are, as live organisms, not in commercial trade in

1 this state or are unknown to or unanticipated by the relevant  
2 department may be added to the permitted species list upon  
3 evaluation using the risk assessment procedure described under  
4 subsection (2) or (3), as applicable. After the creation of the  
5 initial permitted species list, any person involved in the  
6 commercialization or sale of aquatic species may petition the  
7 relevant department to review and add a new aquatic species to the  
8 permitted species list for future commercialization and sale in  
9 this state. The petitioner has the burden of demonstrating that the  
10 species passes the risk assessment under subsection (2) or (3), as  
11 applicable. The petitioner shall provide information that is  
12 requested by the relevant department to perform the risk  
13 assessment. Any prior background materials generated as a result of  
14 a federal agency review and identified by the petitioner shall be  
15 considered by the department. The petitioner shall pay a reasonable  
16 fee that does not exceed the administrative costs for the relevant  
17 department to review the petitioned species. The relevant  
18 department may, but is not required to, review on its own  
19 initiative an aquatic species for placement on the permitted  
20 species list.

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