

SENATE, NO. 2374

[Senate, April 12, 2010 - New draft of Senate, No. 2113 and House, No. 786 reported from the committee on the Environmental, Natural Resources and Agriculture.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

AN ACT PROTECTING LAKES AND PONDS.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

1 **SECTION 1.** Section 37B of Chapter 21 of the General Laws, as appearing in the 2008
2 official edition, is hereby amended by striking the second paragraph and inserting in place
3 thereof the following:--

4 For the purposes of this aquatic nuisance control program, the term “aquatic nuisance”
5 shall mean undesirable or excessive substances or populations that interfere with the recreational
6 and ecological potential of a body of water or associated natural resources, and shall include, but
7 not be limited to, rooted aquatic vegetation and algae populations, dreissena mussels, spiny water
8 flea or other invasive species declared to be an aquatic nuisance by the commissioner of the

9 department of conservation and recreation, all of which are hereby declared to be aquatic
10 nuisances for the purposes of this chapter.

11 Except as otherwise authorized by the department, no person shall place or cause to be
12 placed in or upon inland waters of the commonwealth a vessel, as defined in chapter 90B, section
13 1, or a boat trailer that that contains an aquatic nuisance, unless properly decontaminated in
14 accordance with the department's requirements.

15 The department may make rules and regulations, in consultation with the department of
16 fish and game, governing the establishment of the aquatic nuisance control program and for the
17 purpose of suppressing, eradicating, controlling or otherwise mitigating or reducing the risk of
18 the spread of aquatic nuisances. Nothing in this paragraph shall be construed to or have the effect
19 of limiting the authority of the division of fisheries and wildlife to manage and regulate inland
20 fisheries resources and other wildlife pursuant to chapter 131 or chapter 131A.

21 The department may make contracts on behalf of the commonwealth; shall study and
22 promote improved methods of suppressing, controlling or otherwise mitigating or reducing the
23 risk of the spread of such aquatic nuisances; may act in co-operation with any state agency, any
24 person, any subdivision of the commonwealth, any other state, the United States, or any foreign
25 government, and without limiting the generality of the foregoing, shall act in co-operation with
26 federal and state agencies engaged in the study or control of said aquatic nuisances; may conduct
27 investigations and gather and distribute information concerning such public nuisances; may issue
28 orders or establish quarantines to suppress and/or eradicate such aquatic nuisances; and may
29 advise, make use of and require the use of all lawful means of suppressing, controlling or
30 otherwise mitigating or reducing the risk of the spread of such aquatic nuisances.

31 Whoever resists or obstructs the department, or employee or agent duly authorized by the
32 commissioner or his designee, while any of those persons are engaged in suppressing or
33 eradicating any aquatic nuisance as defined in the second paragraph of this section, or whoever
34 knowingly violates any rule, regulation, order or quarantine issued by the commissioner, in
35 writing, relative to the suppression or eradication of aquatic nuisances shall be subject to either
36 (a) a civil penalty of not more than \$10,000 for each violation; or (b) the fines and sanctions set
37 forth in section 5D of chapter 90B. Each day that such violation occurs or continues shall be
38 deemed a separate violation. The penalty may be assessed by the department, and may be
39 recovered in an action brought on behalf of the commonwealth in the superior court. The
40 commonwealth also may bring an action for injunctive relief in the superior court for any such
41 violation, and the superior court shall have jurisdiction to enjoin such violation and to grant such
42 further relief as it may deem appropriate.

43 No owner or occupant of an estate infested or infected by any of the aforesaid aquatic
44 nuisances shall by reason thereof be civilly or criminally liable except to the extent and in the
45 manner and form set forth in this section.

46 **SECTION 2.** Chapter 90B of the General Laws, as so appearing, is hereby amended by
47 inserting the following section:--

48 Section 5D. Notwithstanding section 14, whoever violates section 37B of chapter 21 shall
49 be punished by a fine of not less than one hundred dollars nor more than three hundred dollars,
50 or by imprisonment in a jail or house of correction for not more than thirty days or both.
51 Whoever violates this section on or after a conviction or plea for a first offense shall be punished
52 by a fine of not less than five hundred dollars nor more than one thousand dollars, or by

53 imprisonment in a jail or house of correction for not more than sixty days or both. For each and
54 every offense on and after a conviction or plea for a second offense, whoever violates this
55 section shall be punished by a fine of not less than five thousand dollars and imprisonment in a
56 jail or house of correction for not less than thirty nor more than ninety days. On or after a
57 conviction or plea for a first offense, the director of the office of law enforcement may also
58 proceed against the certificate of number of any vessel involved in a subsequent violation of this
59 section in accordance with section 11(m).

60 **SECTION 3.** Section 10H of chapter 21A, as so appearing, is hereby amended by
61 inserting after the third paragraph the following paragraph:--

62 A person notified to appear before the clerk of the district court as provided in section
63 10G for a violation of the first sentence of section 5D of chapter 90B may so appear within the
64 time specified and pay a fine of \$100. A person notified to appear before the clerk of the district
65 court as provided in section 10G for a violation of the second sentence of section 5D of chapter
66 90B may so appear within the time specified and pay a fine of \$500.