

Senate, No. 2450

[May 20, 2010 – Substituted by amendment by the Senate (Ways and Means) for Senate, No. 2374.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

AN ACT PROTECTING LAKES AND PONDS FROM AQUATIC NUISANCES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to allow forthwith for the eradication of certain aquatic nuisances from the commonwealth's lakes and ponds, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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.** Chapter 21 of the General Laws is hereby amended by striking out section
2 37B, as appearing in the 2008 Official Edition, and inserting in place thereof the following
3 section:--

4 Section 37B. (a) For the purposes of this section, the following terms shall have the
5 following meanings, unless the context clearly requires otherwise:--

6 “Aquatic nuisance”, shall mean undesirable or excessive substances or populations that
7 interfere with the recreational or ecological potential of a body of water or interfere with the
8 natural resources thereof, and shall include, but not be limited to, rooted aquatic vegetation and
9 algae populations, dreissena mussels, spiny water fleas and any other invasive species that the

10 commissioner of the department of conservation and recreation declares to be an aquatic
11 nuisance.

12 "Boat transporter", any vehicle combination including a stinger-steered boat transporter
13 and a low-boy boat transporter, designed and used specifically for the transport of assembled
14 boats and boat hulls. The boats may be partially disassembled to facilitate transportation.

15 "Inland waters", all waters within the jurisdiction of the commonwealth other than
16 coastal waters.

17 "Low-boy boat transporter", a semi-trailer unit in which the trailer is designed and used
18 specifically for the transport of assembled boats and hulls. The top surface of the deck platform
19 of such semi-trailer shall not be more than 36 inches above the surface on which the wheels of
20 the vehicle rest.

21 "Truck-trailer boat transporter", a boat transporter combination consisting of a truck
22 towing a trailer using typically a ball and socket connection and where the trailer axle is located
23 substantially at the trailer center of gravity, rather than at the rear of the trailer, but so as to
24 maintain a downward force on the trailer tongue.

25 "Vessel", watercraft of every description, except a seaplane on the water used or capable
26 of being used as a means of transportation on water.

27 (b) The department shall establish and maintain an aquatic nuisance control program.
28 The aquatic nuisance control program shall perform the following duties: (i) receive and respond
29 to aquatic nuisance complaints; (ii) work with municipalities, local interest organizations, and
30 agencies of the state to develop long-range programs regarding aquatic nuisance controls; (iii)

31 work with federal, state and local governments to obtain funding for aquatic nuisance control
32 programs; and (iv) administer the grant program under sections 37C and 37D.

33 (c) The department shall adopt regulations, in consultation with the department of fish
34 and game, to enable the aquatic nuisance control program to suppress, eradicate, control and
35 otherwise mitigate or reduce the risk of the spread of aquatic nuisances, consistent with this
36 section.

37 (d) The department shall study and promote improved methods of suppressing,
38 controlling or otherwise mitigating or reducing the risk of the spread of aquatic nuisances and
39 shall act in cooperation with federal and state agencies engaged in the study or control of aquatic
40 nuisances.

41 (e) The department may enter into contracts for the study, control and eradication of
42 aquatic nuisances on behalf of the commonwealth; act in cooperation with any state agency,
43 person, subdivision of the commonwealth, any other state, the United States or any foreign
44 government; issue orders or establish quarantines to suppress or eradicate aquatic nuisances; and
45 advise, make use of and require the use of all lawful means of suppressing, controlling or
46 otherwise mitigating or reducing the risk of the spread of such aquatic nuisances.

47 (f) Except as otherwise authorized by the department, no person shall knowingly and
48 intentionally place or cause to be placed in or upon inland waters an aquatic nuisance.

49 (g) Except as otherwise authorized by the department, no person shall place or cause to
50 be placed in or upon inland waters a vessel, a boat transporter, a truck-trailer boat transporter or
51 any other equipment used in conjunction with such vessel, boat transporter or truck-trailer boat
52 transporter, if the vessel, transporter or other equipment has growing thereon or attached thereto

53 an aquatic nuisance, unless such aquatic nuisance has been cleaned, decontaminated or treated to
54 kill or remove the aquatic nuisance in accordance with the department's regulations.

55 (h) Whoever: (i) knowingly and willfully violates subsection (g) or knowingly and
56 willfully resists or obstructs the department, including any duly authorized employee or agent
57 thereof, in the department's effort to suppress or eradicate an aquatic nuisance; or (ii) having
58 been provided a written copy of any rule, regulation, order or quarantine issued by the
59 commissioner of the department pursuant to this section, knowingly violates such rule,
60 regulation, order or quarantine, shall be subject, at the election of the commissioner of the
61 department, to either:

62 (1) a civil assessment of not more than \$10,000 for each violation; provided, that each
63 day that such violation occurs or continues shall be deemed a separate violation; provided
64 further that the penalty may be assessed by the department and may be recovered in an
65 action brought on behalf of the commonwealth by the office of the attorney general in the
66 superior court; and provided further that, the commonwealth may bring an action for
67 injunctive relief in the superior court relative to any such violation and the superior court
68 shall have jurisdiction to enjoin such violation and to grant such further relief as it deems
69 appropriate; or

70 (2) punishment by a fine of not less than \$100 nor more than \$300 or imprisonment in the
71 house of correction for not more than 30 days or both for a first offense, a fine of not less
72 than \$500 nor more than \$1,000 or imprisonment in the house of correction for not more
73 than 60 days or both for a second offense, and a fine of not less than \$5,000 and
74 imprisonment in the house of correction for not less than 30 days nor more than 90 days

75 for a third or subsequent offense. Upon a conviction for violating this section, the
76 director of the division of law enforcement of the department of fisheries, wildlife and
77 environmental law enforcement may, in addition to the criminal penalties contained in
78 this subsection, suspend or revoke and cancel the certificate of number issued to such
79 violator pursuant to clause (m) of section 11 of chapter 90B of the General Laws and
80 demand the surrender of any suspended, revoked or cancelled certificate of number.

81 (i) Nothing in this section shall be construed to or have the effect of limiting the
82 authority of the division of fisheries and wildlife to manage and regulate inland fisheries
83 resources and other wildlife pursuant to chapter 131 or chapter 131A.

84 **SECTION 2.** Section 10G of chapter 21A of the General Laws, as so appearing, is
85 hereby amended by inserting after the words “environmental police officer”, in line 2, the
86 following words:- , the commissioner of conservation and recreation, acting pursuant to section
87 37B of chapter 21.

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

90 A person notified to appear before the clerk of the district court as provided in section
91 10G may, for a first offense violation of clause (2) of subsection (h) of section 37B of chapter 21,
92 so appear within the time specified and pay a fine of \$100 and, for a second offense violation of
93 said clause (2) of said subsection (h) said section 37B of said chapter 21, so appear within the
94 time specified and pay a fine of \$500.

95 **SECTION 4.** The commissioner of the department of conservation and recreation shall
96 adopt regulations as required by section 37B of chapter 21 of the General Laws not later than 90
97 days after the effective date of this act.

98 **SECTION 5.** Subsection (h) of said section 37B of said chapter 21 shall take effect upon
99 the effective date of regulations promulgated by the department of conservation and recreation
100 pursuant to subsection (c) of said section 37B.