

SENATE No. 2450

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act protecting lakes and ponds from aquatic nuisances.

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.

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

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

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

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

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

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

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

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

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

Upon a conviction for violating this section, the director of the division of law enforcement of the department of fisheries, wildlife and environmental law enforcement may, in addition to the criminal penalties contained in this subsection, suspend or revoke and cancel the certificate of number issued to such violator pursuant to clause (m) of section 11 of chapter 90B of the

General Laws and demand the surrender of any suspended, revoked or cancelled certificate of number.

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

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

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

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

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

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