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Senate Bills 795 through 799 (as introduced 2-19-14)

Sponsor: Senator Mike Kowall (S.B. 795)  
Senator Arlan Meekhof (S.B. 796)  
Senator Phil Pavlov (S.B. 797)  
Senator Mike Green (S.B. 798)  
Senator Tom Casperson (S.B. 799)

Committee: Natural Resources, Environment and Great Lakes

Date Completed: 3-24-14

### **CONTENT**

**Senate Bill 795 would amend Parts 413 (Transgenic and Nonnative Organisms) and 473 (Commercial Fishing) of the Natural Resources and Environmental Protection Act (NREPA) to do the following:**

- Increase the penalties for the illegal possession or introduction of a prohibited species, if the species were an aquatic species and the offense were committed knowingly.
- Provide that a vehicle, equipment, or other property used in a criminal violation of Part 413 involving an aquatic species would be subject to seizure and forfeiture.
- Require a court to order a one-year suspension of a person's commercial fishing license or permit and any vehicle group designation for a nonpassenger commercial motor vehicle (CMV), if the person committed a criminal violation of Part 413 or sold a prohibited or restricted aquatic species.
- Require the court to order permanent revocation of the commercial fishing license or permit or vehicle group designation, for a second violation.
- Prohibit the Department of Natural Resources (DNR) from issuing a license or permit under Part 473 to a person whose license or permit was suspended or revoked for the period provided in the court order, if the DNR maintained a database of suspensions or revocations.
- Establish conditions for the reinstatement of a suspended commercial fishing license or permit, including payment to the DNR of a \$125 reinstatement fee.

**Senate Bill 796 would amend the sentencing guidelines in the Code of Criminal Procedure to reflect the changes proposed by Senate Bill 795 regarding the felony penalties for violations involving aquatic species.**

**Senate Bill 797 would amend the Revised Judicature Act to include a criminal violation of Part 413 of NREPA among the crimes subject to the Act's provisions regarding the seizure and forfeiture of property.**

**Senate Bill 798 would amend the Michigan Vehicle Code to do the following:**

- **Require the Secretary of State (SOS) to revoke or suspend a person's vehicle group designation pursuant to a court order under Senate Bill 795 within seven days after receiving notice from the court.**
- **Establish conditions for the reinstatement of a suspended designation, including payment to the SOS of a \$15 driver license clearance fee and an \$85 reinstatement fee.**
- **Require the SOS to reissue the vehicle group designation of a person whose suspension was rescinded within 30 days after the rescission.**

**Senate Bill 799 would amend the Administrative Procedures Act to provide that a requirement that a person whose license is to be suspended or revoked be given an opportunity to show compliance with all lawful requirements for retention of the license, would not apply with regard to a commercial fishing license or permit suspended or revoked under Senate Bill 795.**

Senate Bills 796 through 799 are tie-barred to Senate Bill 795.

### **Senate Bill 795**

#### Possession of Prohibited Species

Part 413 prohibits a person from knowingly possessing a live organism that is a prohibited or restricted species, except under any of the following circumstances:

- The person intends to present the specimen for identification or similar purposes to a person who is a certified or registered pesticide applicator, to a public or private institution of higher education, or to the DNR, the Michigan Department of Agriculture and Rural Development (MDARD), or any other State, local, or Federal agency with responsibility for the environment, natural resources, or agriculture.
- The person has been presented with a specimen of a prohibited or restricted species for identification or similar purposes.
- The person possesses the species in conjunction with otherwise lawful activity to eradicate or control it.

The definitions of "prohibited species" and "restricted species" include certain aquatic plant, bird, crustacean, fish, insect, mammal, and mollusk species, including a hybrid or genetically engineered variant of the species, or the listed species' fragments, seeds, or eggs, as applicable. Additionally, the Natural Resources Commission and the Agriculture and Rural Development Commission may by order add to or delete from the lists of prohibited and restricted species. The applicable Commission must list a species as prohibited or as restricted if it makes certain determinations specified in Part 413.

A person who knowingly violates the prohibition against possession of a prohibited or restricted species or who willfully or in a grossly negligent manner violates a condition of a permit issued under Part 413 is guilty as follows:

- For a violation involving a restricted species, the person is guilty of a misdemeanor punishable by imprisonment for up to one year and a mandatory fine of at least \$1,000 but not more than \$10,000.
- For a violation involving a prohibited species, the person is guilty of a felony and may be imprisoned for a maximum of two years and must be fined at least \$2,000 but not more than \$20,000.

Under the bill, the prescribed felony penalty would apply to a violation involving a prohibited species other than an aquatic species. For a violation involving a prohibited aquatic species,

the person would be guilty of a felony and could be imprisoned for a maximum of three years and would have to be fined at least \$2,000 but not more than \$100,000.

### Introduction of Prohibited Species

Part 413 prohibits a person from introducing a prohibited species, a restricted species, or a genetically engineered or nonnative aquatic plant, bird, crustacean, fish, mammal, or mollusk, unless the introduction is authorized by a permit issued by the DNR or MDARD, as applicable.

If a person violates this prohibition with respect to a prohibited species or a genetically engineered aquatic plant, bird, crustacean, fish, insect, mammal, or mollusk and knows or should know the identity of the species or that the organism is genetically engineered, the person is guilty of a felony and may be imprisoned for a maximum of two years and must be fined at least \$2,000 but not more than \$20,000. The bill would eliminate the references to an aquatic plant and a fish in this provision.

Instead, with respect to an aquatic species, introduction of a prohibited species or a genetically engineered crustacean, fish, insect, mollusk, or aquatic plant by a person who knew or should have known the identity of the species or that the organism was genetically engineered would be guilty of a felony and could be imprisoned for a maximum of three years and would have to be fined at least \$2,000 but not more than \$100,000.

### Other Penalties

Seizure & Forfeiture of Property. Under the bill, a vehicle, equipment, or other property used in a criminal violation of Part 413 or a rule promulgated or permit issued under it that involved an aquatic species would be subject to seizure and forfeiture as provided in Chapter 47 of the Revised Judicature Act (which Senate Bill 797 would amend).

Suspension/Revocation. If a person committed a criminal violation of Part 413 or a rule or permit under Part 413, or knowingly sold or offered to sell a prohibited or restricted species, and the violation involved an aquatic species, the court would have to order the suspension for one year of any commercial fishing license or permit under Part 473 (Commercial Fishing) issued to the person and any vehicle group designation for a nonpassenger CMV under the Michigan Vehicle Code procured by the person. The person would not be eligible to be issued any such license or permit or to procure such a designation for one year. If the remaining term of an existing commercial fishing license or permit or vehicle group designation were less than one year, the court would have to order that the license, permit, or designation be revoked and that the person not be eligible to be issued any such license, permit, or designation for one year. For a second violation, the court would have to order revocation of the license, permit, or designation and the person's permanent ineligibility to be issued such a license, permit, or designation.

An order under these provisions would have to indicate that the Secretary of State would have to suspend or revoke the vehicle group designation within seven business days after receiving the order. As it applied to a commercial fishing license or permit under Part 473, an order would be self-effectuating. The clerk of the court would have to send a copy of the order to the DNR and the SOS.

If a license or permit were ordered to be suspended or revoked and if the DNR maintained a database of suspensions or revocations of licenses or permits under Part 473, the Department could not issue a license or permit under Part 473 to the person for the period provided in the order.

If a license or permit were ordered to be suspended, the suspension would remain in effect until the suspension period set forth in the court order had elapsed and the person paid the DNR a reinstatement fee of \$125. Unless a person's license or permit were otherwise suspended, revoked, or denied, the license or permit would be reinstated immediately when these conditions were satisfied.

### **Senate Bill 796**

Under the sentencing guidelines, possession of a prohibited species and introduction of a prohibited or genetically engineered species of known identity are class G felonies against property with a statutory maximum of two years' imprisonment. Under the bill, these provisions would apply in the case of a nonaquatic species. Comparable violations involving an aquatic species would be class F property felonies with a statutory maximum of three years' imprisonment.

### **Senate Bill 797**

Chapter 47 of the Revised Judicature Act provides for the seizure and forfeiture of property that is obtained through the commission of a crime or by the sale or exchange of proceeds of a crime, as well as property used in the commission of a crime. "Crime" means committing, attempting to commit, conspiring to commit, or soliciting another person to commit any of a number of specified offenses in connection with which the forfeiture of property is sought. The bill would include among these offenses a criminal violation of Part 413 of NREPA.

### **Senate Bill 798**

Under the bill, if a court notified the SOS that a vehicle group designation for a nonpassenger CMV had to be suspended or revoked for an aquatic species violation under Senate Bill 795, the SOS, within seven business days, would have to suspend or revoke the license as provided in the order and notify the licensee by first-class mail at his or her last known address. If the person's designation were already suspended, revoked, or denied or the person did not have a designation to suspend, the SOS could not issue such a designation to him or her until he or she was in compliance with the Vehicle Code, specifically the provisions described below.

A suspension imposed under the bill would remain in effect until all of the following occurred:

- The suspension period set forth in the court order had elapsed.
- The person paid to the SOS a \$15 driver license clearance fee, which the SOS would have to deposit in the General Fund.
- The person paid the reinstatement fee imposed under Section 320e (described below).

The money from the clearance fee deposited in the General Fund would have to be used to defray the SOS's expenses in processing the suspension and reinstatement of operator's licenses.

Unless a person's designation were otherwise suspended, revoked, denied, or canceled, the designation would be reinstated immediately upon satisfaction of the prescribed conditions. The SOS would have to reissue the designation of a person whose suspension was rescinded within 30 days after the rescission.

Under Section 320e, a person whose operator's or chauffeur's license is suspended because he or she failed to appear for a hearing, comply with a repayment plan order, or respond to a license suspension notice under the Support and Parenting Time Enforcement Act must

pay a license reinstatement fee of \$85 to the SOS before a license is issued or returned to the person. The fee must be deposited in the General Fund to defray the SOS's costs of processing the suspension and reinstatement of driver licenses. Under the bill, this fee also would apply to a person whose license was suspended for an aquatic species violation (as Senate Bill 795 would require).

A license reinstatement fee of \$125 applies to a person whose driver license was suspended, revoked, or restricted pursuant to specific sections of the Vehicle Code. These sections include Section 625, which pertains to the operation of a motor vehicle while intoxicated or visibly impaired by alcoholic liquor, a controlled substance, or other intoxicating substance. The bill would eliminate the reference to Section 625.

### **Senate Bill 799**

Under the Administrative Procedures Act, before beginning proceedings for the suspension, revocation, annulment, withdrawal, recall, cancelation, or amendment of a license, an agency must notify the licensee of facts or conduct that warrants the intended action.

The licensee must be given an opportunity to show compliance with all lawful requirements for retention of the license, except as otherwise provided in the Support and Parenting Time Enforcement Act and the Regulated Occupation Support Enforcement Act. The bill would create another exception to this requirement for a commercial fishing license or permit suspended or revoked under Part 413 of NREPA (as Senate Bill 795 would require).

MCL 324.41305 et al. (S.B. 795)  
777.13e (S.B. 796)  
600.4701 (S.B. 797)  
257.320e (S.B. 798)  
24.292 (S.B. 799)

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

#### **Senate Bill 795**

The bill would have a minimal fiscal impact on the Department of Natural Resources and no fiscal impact on local units of government. To the extent that individuals holding hunting or fishing licenses were found guilty of violating the provisions of Part 413 that would be subject to license sanctions under the bill, the DNR could lose revenue that it would otherwise receive from future license sales or renewals. However, the DNR would receive revenue from the \$125 license reinstatement fee, which would likely be a greater amount than what the Department would lose from lost sales. While the number of violations that would be covered under the bill is not known at this time, it is not expected that the number would be very large, so the fiscal impact of the bill on the DNR would be minimal.

The bill also would create increased felony penalties, which could potentially increase the cost to State government for those convicted of the felony offense. Any added imprisonment time would have an average cost of \$35,000 per prisoner per year. There would be no fiscal impact on local government from the increased penalty.

#### **Senate Bill 796**

The bill would revise the Code of Criminal Procedure to reflect the changes made to the felony penalties in Senate Bill 795.

### **Senate Bill 797**

The bill would have no fiscal impact on State or local government.

### **Senate Bill 798**

The suspension of a person's vehicle group designation for a nonpassenger commercial motor vehicle for a violation of Part 413 of NREPA (pursuant to Senate Bill 795) would have a negligible effect on the State's revenue. For any such suspension, the State would be paid a reinstatement fee of \$85 when the person again became eligible to reinstate his or her license. In addition, a \$15 driver license clearance fee would be paid to the Department of State to defray the expenses of the Department to process the suspension and reinstatement. The amount of revenue received by the State from the reinstatement fees is indeterminate and would depend on the number of suspensions or revocations that would occur under the bill.

Additionally, the bill would require the Department of State to notify the licensee of the suspension or revocation via firstclass mail. The Department would incur this cost, but due to the small number of anticipated violations, the cost should be absorbable within the Department's annual appropriations.

Finally, the bill would eliminate the \$125 reinstatement fee for license suspensions or revocations for drunk driving violations, under Section 625 of the Michigan Vehicle Code (although other sections of the Code also provide for license sanctions for drunk driving offenses). Based on data for Driver Responsibility Fees for drunk driving offenses, there are an estimated 16,000 such violations each year. Assuming that all of those offenders' licenses are suspended or revoked, and reinstated, the potential loss of revenue for the State due to the elimination of this provision would be an estimated \$2.0 million annually.

### **Senate Bill 799**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.