



HOUSE BILL No. 5555

February 6, 1996, Introduced by Reps. Green, Llewellyn, Horton, Gernaat, Jellema, Middaugh, Goschka, Rocca, Kukuk, Lowe, McManus, Rhead, Hill, LeTarte, Hammerstrom, McBryde, Ryan, Voorhees, Gustafson, Alley and Gnodtke and referred to the Committee on Agriculture and Forestry.

A bill to define, develop, and regulate aquaculture as an agricultural enterprise in this state; to provide powers and duties of certain state agencies and departments; and to provide for certain penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan aquaculture development act".

3 Sec. 2. As used in this act:

4 (a) "Aquacultural products" means any products, coproducts,
5 or by-products of aquaculture species.

6 (b) "Aquaculture" means the commercial husbandry of aquacul-
7 ture species, including, but not limited to, the culturing,
8 producing, growing, using, propagating, harvesting, transporting,
9 importing, exporting, or marketing of aquacultural products to or

1 from privately controlled waters or public waters under an
2 appropriate permit or registration.

3 (c) "Aquaculture facility" means a farm or farm operation
4 engaged in any aspect of aquaculture in privately controlled
5 waters capable of holding aquaculture species with a barrier or
6 enclosure to prevent their escape into public waters.

7 (d) "Aquaculture facility registration" means a registration
8 issued by the director allowing a facility to engage in
9 aquaculture.

10 (e) "Aquaculture research permit" means a permit issued by
11 the director to private or public researchers to study and cul-
12 ture aquaculture species not included on the director's approved
13 list of aquaculture species for the evaluation of aquacultural
14 potential and environmental interactions.

15 (f) "Aquaculture species" means aquatic plant or animal
16 organisms including, but not limited to, fish, crustaceans,
17 insects, mollusks, reptiles, or amphibians reared or cultured
18 under controlled conditions in an aquaculture facility.

19 (g) "Aquaculturist" means a person involved in or engaged in
20 any aspect of aquaculture.

21 (h) "Confinement research facility" means a facility holding
22 an aquaculture research permit and enclosed in a secure structure
23 and separated from other aquaculture facilities in which aquacul-
24 ture species are isolated and maintained in complete and continu-
25 ous confinement to prevent their escape into the environment and
26 to prevent the release of any possible pathogens into the
27 environment.

1 (i) "Department" means the Michigan department of
2 agriculture.

3 (j) "Director" means the director of the Michigan department
4 of agriculture or his or her designee.

5 (k) "Farm" or "farm operation" means those terms as defined
6 in the Michigan right to farm act, Act No. 93 of the Public Acts
7 of 1981, being sections 286.471 to 286.474 of the Michigan
8 Compiled Laws.

9 (l) "Law enforcement officer" means a person appointed by
10 the state or a legal governmental unit who is responsible for the
11 enforcement of the criminal laws of this state.

12 (m) "Person" means an individual, corporation, limited
13 liability corporation, partnership, association, joint venture,
14 or other legal entity.

15 (n) "Privately controlled waters" means waters controlled
16 within ponds, vats, raceways, tanks, and any other indoor or out-
17 door structure wholly within or on the enclosed land of an owner
18 or lessor and used with an aquaculture facility or for waters
19 holding captive aquacultural products in complete and continuous
20 confinement.

21 (o) "Retail bait outlet" means a facility that sells any
22 live or dead organism, edible or digestible material, organic or
23 processed food, or scented material each of which may be used to
24 attract fish, including, but not limited to, worms, leeches,
25 aquatic insects, crayfish, amphibians, fish eggs, minnows or
26 other fish, marshmallows, cheese, pork rinds, or any part
27 thereof, directly to the consumer.

1 (p) "Retail ornamental fish facility" means a facility in
2 which a person sells, leases, or loans ornamental species of
3 aquatic organisms that may live in fresh, brackish, or saltwater
4 environments to the general public for home or public display
5 purposes.

6 Sec. 3. (1) Aquaculture is an agricultural enterprise and
7 is considered to be part of the farming and agricultural industry
8 of this state. The director shall assure that aquaculture is
9 afforded all rights, privileges, opportunities, and responsibili-
10 ties of other agricultural enterprises.

11 (2) Aquaculture is a form of agriculture. Aquaculture
12 facilities and aquaculture uses are considered to be a form of
13 agricultural facilities and uses.

14 (3) Aquacultural products lawfully taken, produced, pur-
15 chased, possessed, or acquired from within this state or imported
16 into this state are the exclusive and private property of the
17 aquaculturist.

18 (4) Aquaculture species when normally harvested from aqua-
19 culture facilities in privately controlled waters registered or
20 permitted by an aquaculture research permit by the department are
21 exempt from size, catch, and possession limits, closed seasons,
22 and any other restriction imposed in parts 459 (propagation of
23 game fish in private waters) and 487 (sport fishing) of the natu-
24 ral resources and environmental protection act, Act No. 451 of
25 the Public Acts of 1994, being sections 324.45901 to 324.45908
26 and 324.48701 to 324.48740 of the Michigan Compiled Laws.

1 (5) This act does not give aquaculture facilities authority
2 to take wild aquaculture species from the public waters and held
3 in trust in violation of Act No. 451 of the Public Acts of 1994,
4 being sections 324.101 to 324.90106 of the Michigan Compiled
5 Laws, unless under a permit issued by the department of natural
6 resources.

7 Sec. 4. (1) The department shall administer this act.

8 (2) The department may conduct activities designed to
9 develop and assist the aquaculture industry in the manner pro-
10 vided for by law.

11 Sec. 5. (1) The director shall consult with the department
12 of environmental quality, the department of natural resources,
13 representatives of the Michigan aquaculture industry, representa-
14 tives of institutions of higher education, and the general public
15 to establish a list of approved aquaculture species that may be
16 possessed for aquaculture purposes. The director shall review
17 the list annually or more often, as necessary. Only those aqua-
18 culture species on the director's list can be used for purposes
19 of aquaculture.

20 (2) The director shall approve the list and shall review the
21 list annually or more often, as necessary.

22 (3) The following types of aquaculture species are qualified
23 for inclusion on the director's list:

24 (a) Aquaculture species that are naturally indigenous.

25 (b) Aquaculture species that have been naturalized within
26 the Great Lakes watershed.

1 (c) Aquaculture species that could not perpetuate in this
2 state.

3 (d) Aquaculture species that are held in a confinement
4 research facility for purposes of research.

5 (4) A person may submit for consideration by the director
6 for the addition or removal of aquaculture species to the
7 director's list of approved species or for the issuance of an
8 aquaculture research permit for a species that lacks available
9 biological data to make a reasonable judgment on the potential
10 use and approval to the director's list of approved aquaculture
11 species by submitting a written application to the department.
12 The director shall review the application within 90 days after
13 submission. The director shall make a final approval or rejec-
14 tion within 90 days after the date of the review.

15 (5) The director may remove an aquaculture species from the
16 list established pursuant to subsection (1) if the director
17 determines on the basis of proven scientific research and biolog-
18 ical evidence that failure to remove the species would pose a
19 threat to the public or animal health, safety, and welfare or a
20 threat to the environment.

21 (6) The following freshwater species are approved by the
22 director:

23	(a) Lake sturgeon	(Acipenser fulvescens)
24	(b) Paddlefish	(Polyodon spathula)
25	(c) Arctic grayling	(Thymuallus arcticus)
26	(d) Atlantic salmon	(Salmo salar)

1	(e) Brown trout	(<i>Salmo trutta</i>)
2	(f) Arctic charr	(<i>Salvelinus alpinus</i>)
3	(g) Brook trout	(<i>Salvelinus fontinalis</i>)
4	(h) Splake	(<i>Salmo trutta</i> x <i>Salvelinus</i>
5		<i>fontinalis</i>)
6	(i) Lake trout	(<i>Salvelinus namaycush</i>)
7	(j) Chinook salmon	(<i>Oncorhynchus tshawytscha</i>)
8	(k) Coho salmon	(<i>Oncorhynchus kisutch</i>)
9	(l) Pink salmon	(<i>Oncorhynchus gorbuscha</i>)
10	(m) Rainbow trout	(<i>Oncorhynchus mykiss</i>)
11	(n) Lake whitefish	(<i>Coregonus chupeaformis</i>)
12	(o) Lake herring	(<i>Coregonus artedii</i>)
13	(p) Muskellunge	(<i>Esox masquinongy</i>)
14	(q) Northern pike	(<i>Esox lucius</i>)
15	(r) Tiger muskie	(<i>Esox masquinongy</i> x <i>Esox</i>
16		<i>lucius</i>)
17	(s) Common carp	(<i>Cyprinus carpio</i>)
18	(t) Goldfish	(<i>Carassius auratus</i>)
19	(u) Creek chub	(<i>Semotilus atromaculatus</i>)
20	(v) Bowfin	(<i>Amia calva</i>)
21	(w) Redbelly dace	(<i>Phoxinus eos</i>)
22	(x) Finescale dace	(<i>Phoxinus neogaeus</i>)
23	(y) Common shiner	(<i>Luxilus cornutus</i>)
24	(z) Golden shiner	(<i>Notemigonus crysoleucas</i>)
25	(aa) Emerald shiner	(<i>Notropis atherinoides</i>)
26	(bb) Bluntnose minnow	(<i>Pimephales notatus</i>)

1	(cc) Fathead minnow	(Pimephales promelas)
2	(dd) Black bullhead	(Ameiurus melas)
3	(ee) Yellow bullhead	(Ameiurus natalis)
4	(ff) Brown bullhead	(Ameiurus nebulosus)
5	(gg) Channel catfish	(Ictalurus punctatus)
6	(hh) Flathead catfish	(Pylodictis olivaris)
7	(ii) Burbot	(Lota lota)
8	(jj) Smallmouth bass	(Micropterus dolmieu)
9	(kk) Largemouth bass	(Micropterus salmoides)
10	(ll) White crappie	(Pomoxis annularis)
11	(mm) Black crappie	(Pomoxis nigromaculatus)
12	(nn) Hybrid crappie	(Pomoxis annularis x Pomoxis
13		nigromaculatus)
14	(oo) Warmouth	(Chaenobryttus gulosus)
15	(pp) Rock bass	(Ambloplites rupestris)
16	(qq) Green sunfish	(Lepomis cyanellus)
17	(rr) Bluegill	(Lepomis macrochirus)
18	(ss) Hybrid bluegill	(Lepomis cyanellus x Lepomis
19		macrochirus)
20	(tt) Pumpkinseed	(Lepomis gibbosus)
21	(uu) Redear sunfish	(Lepomis microlophus)
22	(vv) Sauger	(Stizostedion candense)
23	(ww) Walleye	(Stizostedion vitreum)
24	(xx) Saugeye	(Stizostedion
25		candense x Stizostedion
26		vitreum)

1	(yy) Yellow perch	(<i>Perca flavescens</i>)
2	(zz) Smallmouth	
3	buffalofish	(<i>Ictiobus bubalus</i>)
4	(aaa) Largemouth	
5	buffalofish	(<i>Ictiobus cyprinellus</i>)
6	(bbb) Black buffalofish	(<i>Ictiobus niger</i>)
7	(ccc) White perch	(<i>Morone americana</i>)
8	(ddd) White bass	(<i>Morone chrysops</i>)
9	(eee) Tilapia	(Genera of <i>Tilapia</i> (except
10		<i>T. rondelii</i>), <i>Oreochromis</i> ,
11		<i>Sarotherodon</i> and hybrids
12		thereof)

13 (7) The following other aquatic organisms are approved by
14 the director:

15	(a) Prawn	(<i>Macrobrachium rosenbergii</i>)
16	(b) Crayfish	(<i>Orconectes immunus</i> ,
17		<i>O. propinquus</i> , <i>O. virilis</i> ,
18		<i>Cambarus bartonii</i> ,
19		<i>C. robustus</i>)

20 (8) The following salt or brackish waters species are
21 approved by the director:

22	(a) Brine shrimp	(<i>Artemia</i> sp.)
23	(b) Shrimp	(All species of the genus
24		<i>Peneaus</i>)

25 (9) The following plant species are approved by the
26 director:

1	(a) White water lily	(<i>Nymphaea odorata</i>)
2	(b) Yellow water lily	(<i>Nuphar lutea</i>)
3	(c) Lotus	(<i>Nelumbo lutea</i>)
4	(d) Duckweed	(<i>Lemna minor</i>)
5	(e) Arrowhead	(<i>Sagittaria latifolia</i> ,
6		<i>S. cuneata</i> , <i>S. rigida</i> ,
7		<i>S. graminea</i>)
8	(f) Pickerelweed	(<i>Pontederia cordata</i>)
9	(g) Bulrush	(<i>Scirpus americanus</i>)
10	(h) Spikerush	(<i>Eleocharis rostellata</i> ,
11		<i>E. acicularis</i> ,
12		<i>E. intermedia</i> , <i>E. elliptica</i> ,
13		<i>E. olivacea</i> , <i>E. erthropoda</i> ,
14		<i>E. smallii</i> , <i>E. obtusa</i>)
15	(i) Sedges	(<i>Cyperus diandrus</i> ,
16		<i>C. rivularis</i> , <i>C. filiculmis</i> ,
17		<i>C. strigosus</i> , <i>C. esculentus</i>)
18	(j) Rushes	(<i>Juncus effusus</i> , <i>J. balticus</i> ,
19		<i>J. bufonius</i> , <i>J. tenuis</i> ,
20		<i>J. dudleyi</i> , <i>J. pelocarpus</i> ,
21		<i>J. canadensis</i> ,
22		<i>J. brachycephalus</i> ,
23		<i>J. acuminatus</i> , <i>J. nodosus</i> ,
24		<i>J. alpinus</i> , <i>J. articularis</i>)
25	(k) Burreed	(<i>Sparganium eurycarpum</i>)
26	(l) Water primrose	(<i>Jussiaea repens</i>)

- 1 (m) Water smartweed (Polygonum amphibium)
- 2 (n) Watercress (Nasturtium officinale)
- 3 (o) Cattails (Typha latifolia)
- 4 (10) The following species and hybrids of those species are
- 5 prohibited by the director:
- 6 (a) Oriental weatherfish (Misgurnus anguillicaudatus)
- 7 (b) Grass carp (Ctenopharyngodon idellus)
- 8 (c) Ide (Leuciscus idus)
- 9 (d) Rudd (Scardinius erythrophthalmus)
- 10 (e) Bitterling (Rhodeus sericeus)
- 11 (f) Tench (Tinca tinca)
- 12 (g) Bighead carp (Hypophthalmichthys nobilis)
- 13 (h) Silver carp (Hypophthalmichthys molitrix)
- 14 (i) Ruffe (Gymnocephalus cernuus)
- 15 (j) Round goby (Neogobius melanostomus)
- 16 (k) Tubenose goby (Proterorhinus marmoratus)
- 17 (l) Rusty crayfish (Orconectes rusticus)
- 18 (m) Australian freshwater
- 19 lobster (Cherax tenuimanus)
- 20 (n) Australian freshwater
- 21 lobster (Cherax quadricarinatus)

22 Sec. 6. (1) A person shall not engage in aquaculture unless

23 he or she obtains a registration from the department as an aqua-

24 culture facility, obtains an aquaculture research permit, or

25 unless otherwise exempt by rule or law. If the activity in which

26 the aquaculture facility is engaged is required to be regulated

27 under any act, registration under this act does not exempt the

1 person or aquaculture facility from requirements imposed under
2 any local, state, or federal regulation.

3 (2) The following are exempt from registration as an aqua-
4 culture facility:

5 (a) Retail bait outlets.

6 (b) Retail ornamental fish facilities.

7 (c) Persons using privately controlled waters for noncommer-
8 cial purposes.

9 (d) Public aquariums or zoological parks.

10 (e) Portable retail fishing concessions operating less than
11 15 days per year. The person operating the concession shall
12 notify the department of the location and length of operation on
13 a form provided by the department.

14 (3) A person registered or permitted under this act shall
15 keep and maintain records of production, purchases, or legal
16 imports in order to establish proof of ownership. A person
17 transporting aquaculture species shall produce documentation that
18 contains the origin of shipment, registration or permit copies or
19 documentation, and documentation demonstrating shipping destina-
20 tion upon demand of the director or a law enforcement officer.

21 Sec. 7. (1) A completed initial application for a registra-
22 tion shall be submitted to the department not less than 60 days
23 before the proposed operation of the facility.

24 (2) The department shall not issue an initial registration
25 for an aquaculture facility or an aquaculture research permit
26 unless the following have been completed and the facility meets
27 the standards and requirements prescribed by this act:

1 (a) The facility has been inspected by the director and the
2 director has confirmed there are barriers in place to prevent the
3 escape of aquaculture species into the public waters.

4 (b) The owner or his or her agent has received the
5 director's list of approved aquaculture species that may be pos-
6 sessed for aquaculture purposes.

7 (c) The owner or his or her agent has received from the
8 director a current copy of the "Great Lakes fish disease control
9 policy and model program" and other department information.

10 (3) Within 30 days after receipt of an initial registration
11 or permit application, the director shall inspect the aquaculture
12 facility. If the director determines that the facility to be
13 utilized under a registration or permit conforms to standards
14 prescribed by this act, verifies that unlisted aquaculture spe-
15 cies are not in the facility, and reviews and approves research
16 protocols for a proposed aquaculture research permit, the direc-
17 tor shall issue a registration or permit within 60 days of
18 receipt of a registration or permit application.

19 (4) The application for a registration or permit may be
20 denied for failure to comply with the requirements of this act.
21 The department shall notify an applicant of the reasons for a
22 registration or permit denial within 60 days after receipt of an
23 application. The notice shall specify the deficiencies to be
24 corrected in order for a registration or permit to be issued.

25 (5) Without filing a second application under this section,
26 an applicant may request a second inspection after the specified
27 deficiencies have been corrected. The department shall not make

1 more than 2 preregistration or permitting applications of the
2 same facility per application.

3 (6) The applicant is allowed an opportunity for a hearing
4 pursuant to the administrative procedures act of 1969, Act
5 No. 306 of the Public Acts of 1969, being sections 24.201 to
6 24.328 of the Michigan Compiled Laws, on a denial of a registra-
7 tion or permit.

8 (7) The department shall not return a registration or permit
9 fee or a portion of a registration or permit fee to an applicant
10 if a registration or permit is denied.

11 (8) A registration and permit shall contain the following
12 information:

13 (a) The registration or permit number and expiration date.

14 (b) The complete name, business name, business address, and
15 telephone number of the aquaculture facility owner or aquaculture
16 research permit holder.

17 (c) The complete address of the aquaculture facility or con-
18 finement research facility location.

19 (d) The list of aquaculture species approved for the regis-
20 tered or permitted facility.

21 (e) The complete name, address, and telephone number of the
22 department contact person regarding aquaculture.

23 (9) Applications for an aquaculture facility shall be accom-
24 panied by the following fees:

25 (a) Aquaculture facility registration - initial application,
26 \$100.00.

1 (b) Aquaculture facility registration - renewal application,
2 \$75.00.

3 (c) Aquaculture research permit - initial application,
4 \$250.00.

5 (d) Aquaculture research permit - renewal application,
6 \$100.00.

7 (10) Application for renewal of a registered aquaculture
8 facility or aquaculture research permit shall be submitted not
9 later than October 1 of each year. Each registration and permit
10 issued shall be for a period of 1 year commencing October 1 and
11 ending the following September 30.

12 (11) Failure to renew by October 1 will require a late pay-
13 ment fine of \$5.00 per day, up to 14 days. If the facility
14 renewal fee is not received by October 15, the registration or
15 permit of the facility is automatically terminated. Upon failure
16 to renew in a timely manner, the person shall resubmit an initial
17 facility registration or permit form with the appropriate fees,
18 previous renewal fees, and penalty fines and shall conform to the
19 requirements of this section in order to reactivate the facility
20 registration or permit.

21 (12) An aquaculture facility registration or permit may be
22 modified to add or remove aquaculture species. The department
23 shall make available an application form for modification of a
24 facility registration or permit.

25 Sec. 8. (1) Research allowed under an aquaculture research
26 permit shall be done in a confinement research facility.

1 (2) A person who holds an aquaculture research permit may
2 not transport aquaculture species that are the subject of the
3 research without prior written permission from the director.

4 (3) The director shall approve the protocol of the aquacul-
5 ture species for the proposed research period. This protocol
6 shall be submitted to the department with the initial or renewal
7 aquaculture research permit application.

8 (4) Upon the completed research period, the director may add
9 or reject an aquaculture species to the director's list of
10 approved aquaculture species.

11 (5) The director shall issue proper disposition orders for
12 the aquaculture species at the end of the research period.

13 Sec. 9. (1) The department or its duly authorized agent
14 shall have free access at all reasonable hours to any aquaculture
15 facility or confinement research facility to inspect and to
16 determine if this act is being violated and to secure samples or
17 specimens of any aquaculture species after paying or offering to
18 pay fair market value for such sample or specimen. An inspection
19 shall be done under generally recognized practices designed not
20 to jeopardize the health of the aquaculture species.

21 (2) The director may periodically inspect a registered aqua-
22 culture facility and will annually inspect a permitted confine-
23 ment research facility for the following:

24 (a) For registered and permitted facilities, confirmation
25 that there are in place procedures or barriers designed to pre-
26 vent the escape of aquaculture species into public waters.

1 (b) For registered facilities, confirmation that the
2 aquaculture species are on the director's list.

3 (c) For permitted facilities, confirmation that the facility
4 is following approved protocols and all specimens are accounted
5 for.

6 (d) For all facilities, other requirements as set forth in
7 this act or as required by law.

8 Sec. 10. A person shall not knowingly provide false infor-
9 mation in a matter pertaining to this act and shall not resist,
10 impede, or hinder the director in the discharge of his or her
11 duties under this act.

12 Sec. 11. (1) The department may deny, suspend, revoke, or
13 limit a registration or permit if an applicant, registrant, or
14 permittee fails to comply with or violates this act or rules
15 promulgated under this act.

16 (2) A proceeding relative to the suspension or revocation of
17 a registration or permit shall be conducted pursuant to the
18 administrative procedures act of 1969, Act No. 306 of the Public
19 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
20 Compiled Laws.

21 Sec. 12. The director may promulgate rules he or she con-
22 siders necessary to implement and enforce this act, pursuant to
23 the administrative procedures act of 1969, Act No. 306 of the
24 Public Acts of 1969, being sections 24.201 to 24.328 of the
25 Michigan Compiled Laws.

26 Sec. 13. (1) A person who violates this act or a rule
27 promulgated under this act is guilty of a misdemeanor punishable

1 by a fine of not less than \$300.00 and imprisonment for not less
2 than 30 days, or both.

3 (2) The court may allow the department to recover reasonable
4 costs and attorney fees incurred in a prosecution resulting in a
5 conviction for a violation of subsection (1).

6 (3) The director, upon finding that a person has violated
7 any provisions of this act or a rule promulgated under this act,
8 may do any of the following:

9 (a) Issue a warning.

10 (b) Impose an administrative fine of not more than \$1,000.00
11 for each violation after notice and an opportunity for a
12 hearing. A person aggrieved by an administrative fine issued
13 under this section may request a hearing pursuant to the adminis-
14 trative procedures act of 1969, Act No. 306 of the Public Acts of
15 1969, being sections 24.201 to 24.328 of the Michigan Compiled
16 Laws.

17 (c) Issue an appearance ticket as described and authorized
18 by sections 9a to 9g of chapter 4 of the code of criminal proce-
19 dure, Act No. 175 of the Public Acts of 1927, being sections
20 764.9a to 764.9g of the Michigan Compiled Laws.

21 (4) The director shall advise the attorney general of the
22 failure of any person to pay an administrative fine imposed under
23 this section. The attorney general shall bring a civil action in
24 a court of competent jurisdiction to recover the fine. Civil
25 penalties collected shall be paid to the general fund.

1 (5) Notwithstanding any other provisions of this act, the
2 director may bring an action to do either or both of the
3 following:

4 (a) Obtain a declaratory judgment that a method, activity,
5 or practice is a violation of this act.

6 (b) Obtain an injunction against a person who is engaging in
7 a method, activity, or practice that violates this act.

8 Sec. 14. This act shall take effect 90 days after the date
9 of its enactment.