

SENATE BILL No. 410

April 19, 2001, Introduced by Senator SCOTT and referred to the Committee on Judiciary.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 2157, 52908, and 76107 (MCL 324.2157,
324.52908, and 324.76107), section 2157 as added by 1995 PA 60,
section 52908 as added by 1995 PA 57, and 76107 as added by 1995
PA 58.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2157. (1) ~~If~~ A PERSON WHO VIOLATES SECTION 2156 IS
2 GUILTY OF A CRIME AS FOLLOWS:

3 (A) IF the damages are LESS THAN \$100.00, ~~or less, for a~~
4 ~~first violation of section 2156, a person is responsible for a~~
5 ~~civil fine of not more than \$500.00. If the damages are \$100.00~~
6 ~~or less, for a second or subsequent violation of section 2156, a~~
7 ~~person is guilty of a misdemeanor, punishable by imprisonment for~~

~~1 not more than 90 days, or a fine of not less than \$50.00 or more~~
~~2 than \$500.00, or both, and the costs of prosecution.~~ AS FOLLOWS:

3 (i) FOR A FIRST OFFENSE, A MISDEMEANOR PUNISHABLE BY IMPRIS-
 4 ONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
 5 \$500.00, OR BOTH.

6 (ii) FOR AN OFFENSE FOLLOWING 1 OR MORE PRIOR CONVICTIONS
 7 UNDER THIS SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPOND-
 8 ING TO THIS SECTION, A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
 9 NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$1,000.00, OR
 10 BOTH.

11 (B) ~~(2)~~ If the damages are ~~more than~~ \$100.00 OR MORE but
 12 less than ~~\$1,000.00~~ \$500.00, ~~a person who violates section~~
 13 ~~2156 is guilty of a misdemeanor, punishable by imprisonment for~~
 14 ~~not more than 180 days, or a fine of not less than \$500.00 or~~
 15 ~~more than \$5,000.00, or both, and the costs of prosecution.~~ AS
 16 FOLLOWS:

17 (i) FOR A FIRST OR SECOND OFFENSE, A MISDEMEANOR PUNISHABLE
 18 BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE
 19 THAN \$1,000.00 OR 3 TIMES THE AGGREGATE VALUE OF THE FOREST PRO-
 20 DUCT, IMPROVEMENT, OR PROPERTY INVOLVED, WHICHEVER IS GREATER, OR
 21 BOTH IMPRISONMENT AND A FINE.

22 (ii) FOR AN OFFENSE FOLLOWING 2 OR MORE PRIOR CONVICTIONS
 23 UNDER THIS SECTION, A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT
 24 MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN \$2,000.00, OR BOTH.
 25 FOR PURPOSES OF THIS SUBPARAGRAPH, HOWEVER, A PRIOR CONVICTION
 26 DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR ATTEMPTED
 27 VIOLATION OF SUBDIVISION (A).

1 (C) ~~(3) If the damages are \$1,000.00 \$500.00 or more, a~~
2 ~~person who willfully violates section 2156 is guilty of a felony,~~
3 ~~punishable by imprisonment for not more than 180 days, or a fine~~
4 ~~of not less than \$1,000.00 or more than \$10,000.00, and the costs~~
5 ~~of prosecution~~ A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE
6 THAN 2 YEARS OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE
7 AGGREGATE VALUE OF THE FOREST PRODUCT, IMPROVEMENT, OR PROPERTY
8 INVOLVED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE.

9 (2) THE VALUES OF THE FOREST PRODUCT, IMPROVEMENT, OR PROP-
10 ERTY INVOLVED IN SEPARATE INCIDENTS PURSUANT TO A SCHEME OR
11 COURSE OF CONDUCT WITHIN ANY 12-MONTH PERIOD MAY BE AGGREGATED TO
12 DETERMINE THE TOTAL VALUE OF THE FOREST PRODUCTS, IMPROVEMENTS,
13 OR PROPERTY INVOLVED.

14 (3) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
15 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
16 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
17 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
18 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
19 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
20 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
21 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTAB-
22 LISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT
23 NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

24 (A) A COPY OF THE JUDGMENT OF CONVICTION.

25 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
26 SENTENCING.

(C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

(D) THE DEFENDANT'S STATEMENT.

(4) IF THE SENTENCE FOR A CONVICTION UNDER THIS SECTION IS ENHANCED BY 1 OR MORE PRIOR CONVICTIONS, THOSE PRIOR CONVICTIONS SHALL NOT BE USED TO FURTHER ENHANCE THE SENTENCE FOR THE CONVICTION PURSUANT TO SECTION 10, 11, OR 12 OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.10, 769.11, AND 769.12.

Sec. 52908. (1) ~~if~~ A PERSON WHO VIOLATES THIS PART IS GUILTY OF A CRIME AS FOLLOWS:

(A) IF the damages are LESS THAN \$100.00, ~~or less, for a first violation of this part, a person is responsible for a civil fine of not more than \$500.00. If the damages are \$100.00 or less, for a second or subsequent violation of this part, a person is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than \$50.00 or more than \$500.00, or both, and the costs of prosecution.~~ AS FOLLOWS:

(i) FOR A FIRST OFFENSE, A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$500.00, OR BOTH.

(ii) FOR AN OFFENSE FOLLOWING 1 OR MORE PRIOR CONVICTIONS UNDER THIS SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO THIS SECTION, A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$1,000.00, OR BOTH.

(B) ~~(2)~~ If the damages are ~~more than~~ \$100.00 OR MORE but less than ~~\$1,000.00~~ \$500.00, ~~a person who violates this part~~

1 ~~is guilty of a misdemeanor, punishable by imprisonment for not~~
2 ~~more than 180 days, or a fine of not less than \$500.00 or more~~
3 ~~than \$5,000.00, or both, and the costs of prosecution.~~ AS
4 FOLLOW:

5 (i) FOR A FIRST OR SECOND OFFENSE, A MISDEMEANOR PUNISHABLE
6 BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE
7 THAN \$1,000.00 OR 3 TIMES THE AGGREGATE VALUE OF THE PROPERTY,
8 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE.

9 (ii) FOR AN OFFENSE FOLLOWING 2 OR MORE PRIOR CONVICTIONS
10 UNDER THIS SECTION, A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT
11 MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN \$2,000.00, OR BOTH.
12 FOR PURPOSES OF THIS SUBPARAGRAPH, HOWEVER, A PRIOR CONVICTION
13 DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR ATTEMPTED VIOLA-
14 TION OF SUBDIVISION (A).

15 (C) ~~-(3)-~~ If the damages are ~~-\$1,000.00-~~ \$500.00 or more, ~~a~~
16 ~~person who willfully violates this part is guilty of a felony,~~
17 ~~punishable by imprisonment for not more than 180 days or a fine~~
18 ~~of not less than \$1,000.00 or more than \$10,000.00, and the costs~~
19 ~~of prosecution~~ A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE
20 THAN 2 YEARS OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE
21 AGGREGATE VALUE OF THE PROPERTY, WHICHEVER IS GREATER, OR BOTH
22 IMPRISONMENT AND A FINE.

23 (2) THE VALUES OF PROPERTY DAMAGED IN SEPARATE INCIDENTS
24 PURSUANT TO A SCHEME OR COURSE OF CONDUCT WITHIN ANY 12-MONTH
25 PERIOD MAY BE AGGREGATED TO DETERMINE THE TOTAL VALUE OF PROPERTY
26 DAMAGED.

1 (3) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
2 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR
3 CONVICTIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COM-
4 PLAIN AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION
5 OR CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVIC-
6 TION OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A
7 JURY, AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE
8 BEFORE SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE
9 ESTABLISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING,
10 BUT NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

11 (A) A COPY OF THE JUDGMENT OF CONVICTION.

12 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
13 SENTENCING.

14 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

15 (D) THE DEFENDANT'S STATEMENT.

16 (4) IF THE SENTENCE FOR A CONVICTION UNDER THIS SECTION IS
17 ENHANCED BY 1 OR MORE PRIOR CONVICTIONS, THOSE PRIOR CONVICTIONS
18 SHALL NOT BE USED TO FURTHER ENHANCE THE SENTENCE FOR THE CONVIC-
19 TION PURSUANT TO SECTION 10, 11, OR 12 OF CHAPTER IX OF THE CODE
20 OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.10, 769.11, AND
21 769.12.

22 (5) ~~-(4)-~~ A person who forges a bill of sale or other evi-
23 dence of title prescribed by the department or the department of
24 agriculture or the federal agency that has jurisdiction is guilty
25 of a misdemeanor, punishable by imprisonment for not more than 90
26 days, or a fine of not more than \$100.00, or both.

1 (6) ~~-(5)-~~ In addition to the penalties provided for in this
2 section, a person who violates this part by illegally removing or
3 cutting a plant is liable in a civil action filed by the state or
4 the property owner for up to 3 times the fair market value of the
5 damage caused by the unlawful act or ~~the sum of~~ \$100.00, which-
6 ever is greater, and ~~the~~ FOR court costs and attorney fees.
7 Damages collected ~~pursuant to~~ UNDER this subsection shall be
8 paid to the owner of the lands from which the plants were ille-
9 gally removed or, if removed from state owned lands, to the state
10 treasurer, who shall credit the deposit to the fund that was used
11 to purchase the land on which the violation occurred.

12 (7) ~~-(6)-~~ A person who violates this part by not having in
13 his or her possession a current tax receipt or deed with respect
14 to property, or a copy of the receipt or deed, indicating that
15 the person owned the land from which the plants were taken shall
16 not be prosecuted under this part for that violation if he or she
17 subsequently produces a current tax receipt or deed showing that
18 person's ownership of the property from which the plants were
19 taken.

20 Sec. 76107. (1) Except as provided in section 76108, a
21 person shall not recover, alter, or destroy abandoned property
22 which is in, on, under, or over the bottomlands of the Great
23 Lakes, including those within a Great Lakes bottomlands preserve,
24 unless the person has a permit issued jointly by the secretary of
25 state and the department ~~pursuant to~~ UNDER section 76109.

26 (2) A person who recovers abandoned property without a
27 permit when a permit is required by this part shall transmit the

1 property to the secretary of state and the recovered property
2 shall be the property of the secretary of state.

3 (3) A person shall not remove, convey, mutilate, or deface a
4 human body or the remains of a human body located on the bottom-
5 lands of the Great Lakes.

6 (4) A person who violates ~~subsection (1) by recovering or~~
7 ~~destroying abandoned property with a fair market value of \$100.00~~
8 ~~or more is guilty of a felony, punishable by imprisonment for not~~
9 ~~more than 2 years, or by a fine of not more than \$5,000.00, or~~
10 ~~both.~~ THIS SECTION IS GUILTY OF A CRIME AS FOLLOWS:

11 (A) IF THE VALUE OF THE PROPERTY IS LESS THAN \$100.00, AS
12 FOLLOWS:

13 (i) FOR A FIRST OFFENSE, A MISDEMEANOR PUNISHABLE BY IMPRIS-
14 ONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
15 \$500.00, OR BOTH.

16 (ii) FOR AN OFFENSE FOLLOWING 1 OR MORE PRIOR CONVICTIONS
17 UNDER THIS SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPOND-
18 ING TO THIS SECTION, A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
19 NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$1,000.00, OR
20 BOTH.

21 (B) IF THE VALUE OF THE PROPERTY IS \$100.00 OR MORE BUT LESS
22 THAN \$500.00, AS FOLLOWS:

23 (i) FOR A FIRST OR SECOND OFFENSE, A MISDEMEANOR PUNISHABLE
24 BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE
25 THAN \$1,000.00 OR 3 TIMES THE AGGREGATE VALUE OF THE PROPERTY,
26 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE.

1 (ii) FOR AN OFFENSE FOLLOWING 2 OR MORE PRIOR CONVICTIONS
2 UNDER THIS SECTION, A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT
3 MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN \$2,000.00, OR BOTH.
4 FOR PURPOSES OF THIS SUBPARAGRAPH, HOWEVER, A PRIOR CONVICTION
5 DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR ATTEMPTED VIOLA-
6 TION OF SUBDIVISION (A).

7 (C) IF THE VALUE OF THE PROPERTY IS \$500.00 OR MORE, A
8 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A
9 FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE AGGREGATE VALUE OF
10 THE PROPERTY, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A
11 FINE.

12 (5) THE VALUES OF PROPERTY RECOVERED OR DESTROYED IN SEPA-
13 RATE INCIDENTS PURSUANT TO A SCHEME OR COURSE OF CONDUCT WITHIN
14 ANY 12-MONTH PERIOD MAY BE AGGREGATED TO DETERMINE THE TOTAL
15 VALUE OF THE PROPERTY RECOVERED OR DESTROYED.

16 (6) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
17 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
18 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
19 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
20 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
21 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
22 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
23 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTAB-
24 LISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT
25 NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

26 (A) A COPY OF THE JUDGMENT OF CONVICTION.

1 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
2 SENTENCING.

3 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

4 (D) THE DEFENDANT'S STATEMENT.

5 (7) IF THE SENTENCE FOR A CONVICTION UNDER THIS SECTION IS
6 ENHANCED BY 1 OR MORE PRIOR CONVICTIONS, THOSE PRIOR CONVICTIONS
7 SHALL NOT BE USED TO FURTHER ENHANCE THE SENTENCE FOR THE CONVIC-
8 TION UNDER SECTION 10, 11, OR 12 OF CHAPTER IX OF THE CODE OF
9 CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.10, 769.11, AND 769.12.