

Chapter 142

(House Bill 831)

AN ACT concerning

Agriculture – Invasive Plants – Prevention and Control

FOR the purpose of establishing the Invasive Plants Advisory Committee in the Department of Agriculture; providing for the membership and charge of the Committee; providing for the terms of the members; requiring the Committee to elect a chair, a vice chair, and a secretary of the Committee; requiring the Department to provide staff for the Committee; prohibiting a member from receiving certain compensation, but authorizing a member to receive certain reimbursement; requiring the Secretary of Agriculture to adopt certain regulations by a certain date; prohibiting certain activities involving certain invasive plants under certain circumstances; requiring a person to receive certain approval from the Secretary before engaging in certain activities involving certain invasive plants; ~~requiring~~ authorizing the Secretary to take certain action upon finding certain invasive plants; requiring a person to dispose of certain invasive plants in a certain manner; requiring the Secretary to take certain action if certain invasive plants are not disposed of properly; requiring the ~~State's Attorney~~ Attorney General to institute certain proceedings for certain purposes; requiring the Secretary to issue stop sale orders of certain invasive plants under certain circumstances; authorizing the Secretary to bring an action for injunction under certain circumstances; establishing certain penalties for certain violations under this Act; defining certain terms; and generally relating to the prevention and control of invasive plants.

BY adding to

Article – Agriculture

Section 9.5–101 through 9.5–306 to be under the new title “Title 9.5. Invasive Plants Prevention and Control”

Annotated Code of Maryland

(2007 Replacement Volume and 2010 Supplement)

Preamble

WHEREAS, Certain invasive plants that have been introduced into the State are affecting the health and ecological functioning of plant and animal communities in natural areas such as wildlands, parks, forests, lakes and rivers, and managed areas such as farms and backyards; and

WHEREAS, Invasive plants can cause ecological damage in numerous ways, including outcompeting native species for resources, reducing biological diversity,

disrupting food webs, degrading food and shelter for native animals, altering flooding and fire impacts, and modifying nutrient cycling; and

WHEREAS, Some invasive plants have major economic consequences, including reducing, degrading, or relocating valuable species, compromising farm production and food security, and increasing costs of control or management on public and private lands; and

WHEREAS, Certain invasive plants that contain toxins and allergens may cause a negative impact to human health; and

WHEREAS, Many plants that are invasive to the State and elsewhere in the Mid-Atlantic region were introduced through ornamental horticultural commerce before their invasive habits were realized; and

WHEREAS, Other invasive plants have been inadvertently introduced through regular commercial shipping activities; and

WHEREAS, Reducing the potential for invasive plants to negatively affect native species and their function is beneficial to the citizens of the State; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Agriculture

TITLE 9.5. INVASIVE PLANTS PREVENTION AND CONTROL.

SUBTITLE 1. DEFINITIONS.

9.5–101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “COMMITTEE” MEANS THE INVASIVE PLANTS ADVISORY COMMITTEE.

(C) “INVASIVE PLANT” MEANS A TERRESTRIAL PLANT SPECIES THAT:

(1) DID NOT EVOLVE IN THE STATE; AND

(2) IF INTRODUCED WITHIN THE STATE, WILL CAUSE OR IS LIKELY TO CAUSE, AS DETERMINED BY THE SECRETARY:

- (I) ECONOMIC HARM;
- (II) ECOLOGICAL HARM;
- (III) ENVIRONMENTAL HARM; OR
- (IV) HARM TO HUMAN HEALTH.

(D) "LANDSCAPING SERVICES" INCLUDES SERVICES FOR ORNAMENTAL HORTICULTURAL DESIGN, MAINTENANCE, AND INSTALLATION OF LIVING PLANTS.

(E) "TIER 1 INVASIVE PLANT" INCLUDES INVASIVE PLANT SPECIES THAT CAUSE OR ARE LIKELY TO CAUSE SEVERE HARM WITHIN THE STATE.

(F) "TIER 2 INVASIVE PLANT" INCLUDES INVASIVE PLANT SPECIES THAT CAUSE OR ARE LIKELY TO CAUSE SUBSTANTIAL NEGATIVE IMPACT WITHIN THE STATE.

SUBTITLE 2. INVASIVE PLANTS ADVISORY COMMITTEE.

9.5-201.

THERE IS AN INVASIVE PLANTS ADVISORY COMMITTEE IN THE DEPARTMENT.

9.5-202.

(A) THE COMMITTEE CONSISTS OF THE FOLLOWING MEMBERS:

(1) AS EX OFFICIO MEMBERS:

- (I) THE SECRETARY, OR THE SECRETARY'S DESIGNEE;
- (II) THE SECRETARY OF NATURAL RESOURCES, OR THE SECRETARY'S DESIGNEE;
- (III) THE SECRETARY OF TRANSPORTATION, OR THE SECRETARY'S DESIGNEE;
- (IV) THE SECRETARY OF THE ENVIRONMENT, OR THE SECRETARY'S DESIGNEE; AND

(V) THE DEAN OF THE COLLEGE OF AGRICULTURE AND NATURAL RESOURCES AT THE UNIVERSITY OF MARYLAND, COLLEGE PARK, OR THE DEAN'S DESIGNEE; AND

(2) APPOINTED BY THE SECRETARY:

(I) IN CONSULTATION WITH THE SECRETARY OF NATURAL RESOURCES:

1. ONE INDIVIDUAL FROM A LANDSCAPING INDUSTRY THAT IS REGULATED BY THE DEPARTMENT;

2. ONE INDIVIDUAL FROM A PLANT WHOLESALE INDUSTRY OR A PLANT RETAIL INDUSTRY THAT IS REGULATED BY THE DEPARTMENT; AND

3. ONE INDIVIDUAL FROM A NONGOVERNMENTAL ENVIRONMENTAL ADVOCACY ORGANIZATION;

(II) TWO INDIVIDUALS WITH EXPERIENCE WITH INVASIVE PLANTS, AGRICULTURE, HORTICULTURE, GARDENING, CONSERVATION, OR OTHER RELEVANT EXPERIENCE; AND

(III) ONE CONSUMER MEMBER.

(B) (1) THE TERM OF AN APPOINTED MEMBER IS 3 YEARS AND BEGINS ON JANUARY 1.

(2) AN APPOINTED MEMBER MAY NOT SERVE MORE THAN TWO CONSECUTIVE TERMS.

(C) AN APPOINTED MEMBER SHALL SERVE AT THE PLEASURE OF THE SECRETARY.

9.5-203.

FROM AMONG ITS MEMBERS THE COMMITTEE SHALL ELECT ANNUALLY A CHAIR, A VICE CHAIR, AND A SECRETARY.

9.5-204.

(A) (1) UNTIL THE SECRETARY ADOPTS REGULATIONS IN ACCORDANCE WITH SUBTITLE 3 OF THIS TITLE, THE COMMITTEE SHALL MEET AT LEAST QUARTERLY.

(2) AFTER THE SECRETARY HAS ADOPTED REGULATIONS IN ACCORDANCE WITH SUBTITLE 3 OF THIS TITLE, THE COMMITTEE SHALL MEET AS NEEDED.

(B) A MEMBER OF THE COMMITTEE:

(1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE COMMITTEE; BUT

(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

(C) THE DEPARTMENT SHALL PROVIDE STAFF FOR THE COMMITTEE.

9.5-205.

THE COMMITTEE SHALL:

(1) ADVISE THE SECRETARY REGARDING REGULATIONS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS TITLE; AND

(2) (I) CONDUCT AN ANNUAL REVIEW OF THE RISK ASSESSMENT PROTOCOL ADOPTED UNDER § 9.5-301 OF THIS TITLE; AND

(II) REPORT TO THE SECRETARY REGARDING ANY PROPOSED CHANGES TO THE RISK ASSESSMENT PROTOCOL.

SUBTITLE 3. REGULATION OF INVASIVE PLANTS.

9.5-301.

(A) THE SECRETARY, WITH THE ADVICE OF THE COMMITTEE, SHALL:

(1) ON OR BEFORE OCTOBER 1, 2012, ADOPT REGULATIONS THAT:

(I) ESTABLISH A SCIENCE-BASED RISK ASSESSMENT PROTOCOL FOR INVASIVE PLANTS THAT:

1. WILL SERVE AS A BASIS FOR CREATING A TWO-TIERED REGULATORY APPROACH FOR CONTROLLING INVASIVE PLANTS IN THE STATE; AND

2. CONSIDERS THE HARM, AS DETERMINED BY THE SECRETARY, THAT INVASIVE PLANTS CAUSE IN THE STATE, INCLUDING:

- A. ECONOMIC HARM;**
- B. ECOLOGICAL HARM;**
- C. ENVIRONMENTAL HARM; AND**
- D. HARM TO HUMAN HEALTH;**

(II) GOVERN ADMINISTRATIVE ORDERS THAT THE SECRETARY MAY ISSUE TO ENFORCE THIS SUBTITLE; AND

(III) ESTABLISH A PROCEDURE FOR THE APPROVAL REQUIRED UNDER § 9.5-302 OF THIS SUBTITLE FOR ACTIVITIES INVOLVING TIER 1 INVASIVE PLANTS.

(2) ON OR BEFORE OCTOBER 1, 2013, ADOPT REGULATIONS THAT:

(I) ESTABLISH A LIST OF TIER 1 PLANTS AND TIER 2 PLANTS IN ACCORDANCE WITH THE RISK ASSESSMENT PROTOCOL ADOPTED UNDER PARAGRAPH (1) OF THIS SUBSECTION;

(II) ESTABLISH A PROCEDURE FOR CLASSIFICATION OR DECLASSIFICATION OF AN INVASIVE PLANT AS A TIER 1 INVASIVE PLANT OR A TIER 2 INVASIVE PLANT;

(III) PHASE IN THE IMPLEMENTATION OF THE REQUIREMENTS OF THIS SUBTITLE WITH CONSIDERATION OF THE ECONOMIC IMPACT OF THESE REQUIREMENTS ON NURSERIES, LANDSCAPERS, PLANT WHOLESALERS, PLANT RETAILERS, AND ANY OTHER INDUSTRY;

(IV) ESTABLISH A PROCEDURE FOR THE DISPOSAL OF TIER 1 PLANTS;

(V) DESIGNATE THE FORMAT, SIZE, AND CONTENT OF THE SIGN REQUIRED UNDER § 9.5-302(B)(1) OF THIS SUBTITLE; AND

(VI) PROVIDE FOR THE DISTRIBUTION OF A LIST OF TIER 2 INVASIVE PLANTS TO LICENSED NURSERIES, PLANT DEALERS, AND PLANT BROKERS ON AN ANNUAL BASIS.

9.5-302.

(A) (1) THIS SUBSECTION DOES NOT APPLY TO THE TRANSFER, LEASE, SALE, OR PURCHASE OF REAL PROPERTY ON WHICH AN INVASIVE PLANT IS LOCATED.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION AND IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE SECRETARY, A PERSON MAY NOT PROPAGATE, IMPORT, TRANSFER, SELL, PURCHASE, TRANSPORT, OR INTRODUCE ANY LIVING PART OF A TIER 1 INVASIVE PLANT IN THE STATE.

~~(3) WITH RESPECT TO A TIER 1 INVASIVE PLANT, A PERSON SHALL RECEIVE APPROVAL FROM THE SECRETARY BEFORE~~ A PERSON MAY CONDUCT AN ACTIVITY PROHIBITED UNDER PARAGRAPH (2) OF THIS SUBSECTION IF:

(I) THE PERSON RECEIVES APPROVAL FROM THE SECRETARY BEFORE CONDUCTING THE ACTIVITY; AND

(II) THE ACTIVITY IS FOR THE PURPOSE OF:

~~(H)~~ 1. DISPOSING OF THE INVASIVE PLANT;

~~(H)~~ 2. CONTROLLING THE INVASIVE PLANT;

~~(H)~~ 3. USING THE INVASIVE PLANT FOR RESEARCH OR EDUCATIONAL PURPOSES; OR

~~(H)~~ 4. EXPORTING THE INVASIVE PLANT OUT OF THE STATE.

(B) IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE SECRETARY, A PERSON MAY NOT:

(1) SELL OR OFFER FOR SALE AT A RETAIL OUTLET A TIER 2 INVASIVE PLANT UNLESS THE RETAIL OUTLET POSTS IN A CONSPICUOUS MANNER IN PROXIMITY TO ALL TIER 2 PLANT DISPLAYS, A SIGN IDENTIFYING THE PLANTS AS TIER 2 PLANTS; OR

(2) PROVIDE LANDSCAPING SERVICES TO PLANT OR SUPPLY FOR PLANTING A TIER 2 INVASIVE PLANT UNLESS THE PERSON PROVIDES TO ITS CUSTOMER A LIST OF TIER 2 INVASIVE PLANTS.

9.5-303.

(A) ON FINDING A TIER 1 PLANT IN VIOLATION OF § 9.5-302(A)(2) OF THIS SUBTITLE, THE SECRETARY ~~SHALL~~ MAY:

- (1) ISSUE A WRITTEN CONDEMNATION SEIZURE ORDER;**
- (2) MARK OR TAG THE PLANT IN A CONSPICUOUS MANNER; AND**
- (3) PROVIDE WRITTEN NOTICE TO THE OWNER, TENANT, OR PERSON IN CHARGE OF THE PREMISES.**

(B) (1) ON NOTICE FROM THE SECRETARY, A PERSON SHALL DISPOSE OF A TIER 1 PLANT IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE SECRETARY.

(2) IF A TIER 1 PLANT IS NOT DISPOSED OF IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION, THE SECRETARY SHALL:

- (I) DESTROY THE PLANT;**
- (II) PREPARE A STATEMENT OF FACTS AND A STATEMENT OF THE EXPENSE OF DESTRUCTION; AND**
- (III) PROVIDE COPIES OF THE STATEMENTS TO THE ~~STATE'S ATTORNEY OF THE COUNTY IN WHICH THE OWNER OF THE PROPERTY RESIDES~~ ATTORNEY GENERAL.**

(C) (1) THE ~~STATE'S ATTORNEY~~ ATTORNEY GENERAL SHALL INSTITUTE THE APPROPRIATE PROCEEDING TO COLLECT THE EXPENSES DUE TO THE SECRETARY.

(2) A COPY OF THE STATEMENTS PREPARED UNDER SUBSECTION (B)(2) OF THIS SECTION IS SUFFICIENT EVIDENCE TO PROVE A CLAIM UNDER THIS SUBSECTION.

9.5-304.

(A) IF THE SECRETARY FINDS THAT A TIER 2 PLANT DOES NOT MEET THE SIGNAGE REQUIREMENT UNDER § 9.5-302(B)(1) OF THIS SUBTITLE, THE SECRETARY SHALL:

- (1) ISSUE A STOP SALE ORDER; AND**

(2) MARK OR TAG THE PLANT IN A CONSPICUOUS MANNER.

(B) THE SECRETARY SHALL GIVE WRITTEN NOTICE OF A FINDING MADE UNDER SUBSECTION (A) OF THIS SECTION TO THE OWNER, TENANT, OR PERSON IN CHARGE OF THE PREMISES.

(C) A STOP SALE ORDER ISSUED UNDER THIS SECTION SHALL REMAIN IN EFFECT UNTIL THE REQUIRED SIGNAGE IS POSTED.

9.5-305.

(A) THE SECRETARY MAY BRING AN ACTION FOR AN INJUNCTION AGAINST A PERSON TO:

(1) ENFORCE THIS SUBTITLE;

(2) ENFORCE AN ORDER OF THE SECRETARY UNDER THIS SUBTITLE; OR

(3) PREVENT OR RESTRAIN A VIOLATION OF THIS SUBTITLE.

(B) IN AN ACTION FOR AN INJUNCTION BROUGHT UNDER THIS SECTION, THE SECRETARY DOES NOT HAVE TO ALLEGE OR PROVE THAT:

(1) AN ADEQUATE REMEDY AT LAW DOES NOT EXIST; OR

(2) SUBSTANTIAL OR IRREPARABLE DAMAGE WOULD RESULT FROM THE CONTINUED VIOLATIONS.

(C) AN INJUNCTION INSTITUTED UNDER THIS SECTION SHALL BE ISSUED WITHOUT BOND.

9.5-306.

(A) A PERSON THAT VIOLATES THIS SUBTITLE IS SUBJECT TO THE PENALTIES AND FINES SET FORTH IN TITLE 12 OF THIS ARTICLE.

(B) (1) INSTEAD OF OR IN ADDITION TO ANY OTHER PENALTY AUTHORIZED UNDER THIS ARTICLE, THE SECRETARY MAY IMPOSE A CIVIL PENALTY NOT EXCEEDING \$500 FOR EACH VIOLATION ON A PERSON THAT VIOLATES:

(i) THIS SUBTITLE; OR

(II) ANY ORDER ISSUED BY THE SECRETARY UNDER THIS SUBTITLE.

(2) PENALTIES COLLECTED BY THE SECRETARY UNDER THIS SUBSECTION SHALL BE PAID INTO THE GENERAL FUND OF THE STATE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, April 12, 2011.