

HOUSE BILL 979

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CF SB 915

By: **Delegate Foley**

Introduced and read first time: February 5, 2024

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Agriculture – Invasive Plant Species – Regulation**
3 **(Biodiversity and Agriculture Protection Act)**

4 FOR the purpose of altering the regulatory approach for controlling invasive plant species
5 in the State, including repealing certain provisions of law relating to a two-tiered
6 regulatory approach and requiring the Secretary of Agriculture to establish a certain
7 list of prohibited invasive plants by regulation in a certain manner on or before a
8 certain date; establishing certain protocols for assessing certain nonnative plants
9 and determining whether those plants are invasive or whether the plants may be
10 placed on a certain watch list; requiring the Invasive Plants Advisory Committee in
11 the Department of Agriculture to review certain invasive species assessments to
12 advise the Secretary in a certain manner; requiring the Secretary to include on a
13 certain consolidated list certain invasive plants classified as a prohibited invasive
14 plant in a certain manner; requiring the Department of Agriculture and the
15 Department of Natural Resources each to post on its website a certain consolidated
16 list and certain watch list; requiring the University of Maryland Extension to post a
17 link to certain lists on its website; requiring the Department of Agriculture to
18 distribute certain lists to certain nurseries, plant dealers, and plant brokers in a
19 certain manner; and generally relating to the regulation of invasive plant species.

20 BY repealing and reenacting, with amendments,
21 Article – Agriculture
22 Section 9.5–101, 9.5–205, 9.5–301, 9.5–302, and 9.5–303
23 Annotated Code of Maryland
24 (2016 Replacement Volume and 2023 Supplement)

25 BY repealing and reenacting, without amendments,
26 Article – Agriculture
27 Section 9.5–201
28 Annotated Code of Maryland
29 (2016 Replacement Volume and 2023 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Agriculture
3 Section 9.5–301.1 and 9.5–301.2
4 Annotated Code of Maryland
5 (2016 Replacement Volume and 2023 Supplement)

6 BY repealing
7 Article – Agriculture
8 Section 9.5–304
9 Annotated Code of Maryland
10 (2016 Replacement Volume and 2023 Supplement)

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

13 **Article – Agriculture**

14 9.5–101.

15 (a) In this title the following words have the meanings indicated.

16 (b) **“CLASSIFY AS A PROHIBITED INVASIVE PLANT” MEANS THE SECRETARY**
17 **IS INCLUDING AN INVASIVE PLANT ON THE CONSOLIDATED LIST OF MARYLAND**
18 **INVASIVE PLANT SPECIES IN ACCORDANCE WITH §§ 9.5–301 AND 9.5–301.1 OF THIS**
19 **TITLE.**

20 (c) “Committee” means the Invasive Plants Advisory Committee.

21 (d) **“CONSOLIDATED LIST OF MARYLAND INVASIVE PLANT SPECIES”**
22 **MEANS A LIST OF PLANT SPECIES CLASSIFIED AS PROHIBITED INVASIVE PLANTS IN**
23 **ACCORDANCE WITH §§ 9.5–301 AND 9.5–301.1 OF THIS TITLE.**

24 (e) **“EARLY DETECTION RAPID RESPONSE (EDRR) PLANT SPECIES”**
25 **MEANS A NONNATIVE PLANT SPECIES THAT:**

26 (1) IS NOT YET WIDESPREAD IN THE STATE BUT IS AT RISK OF:

27 (i) BECOMING ESTABLISHED AS AN INVASIVE SPECIES; AND

28 (ii) CAUSING SIGNIFICANT DAMAGE; AND

29 (2) (i) HAS BEEN FOUND IN AT LEAST ONE NATIVE SPECIES
30 HABITAT IN THE STATE; OR

1 (II) HAS NOT YET BEEN FOUND IN THE STATE.

2 (F) “EXPERT ASSESSOR” MEANS:

3 (1) AN INDIVIDUAL OR A TEAM WITHIN THE DEPARTMENT OR THE
4 DEPARTMENT OF NATURAL RESOURCES; OR

5 (2) A QUALIFIED INDEPENDENT ASSESSOR.

6 [(c)] (G) (1) “Invasive plant” means [a terrestrial plant species] ANY LIVING
7 PART OF A PLANT SPECIES OR ITS SUBSPECIES that:

8 [(1)] (I) Did not evolve in the State; and

9 [(2)] (II) If introduced within the State, will cause or is likely to cause, as
10 determined by the Secretary:

11 [(i)] 1. Economic harm;

12 [(ii)] 2. Ecological harm;

13 [(iii)] 3. Environmental harm; or

14 [(iv)] 4. Harm to human health.

15 (2) “INVASIVE PLANT” INCLUDES A COMMERCIAL OR
16 NONCOMMERCIAL PLANT THAT IS TERRESTRIAL OR AQUATIC AND MEETS THE
17 DEFINITION UNDER PARAGRAPH (1) OF THIS SUBSECTION.

18 (H) “INVASIVE PLANT SPECIES STATUS ASSESSMENT PROTOCOL” MEANS A
19 PROTOCOL BASED ON THE NATURESERVE’S 2004 PROTOCOL (“AN INVASIVE
20 SPECIES ASSESSMENT PROTOCOL: EVALUATING NON-NATIVE PLANTS FOR THEIR
21 IMPACT ON BIODIVERSITY. VERSION 1.”).

22 (I) (1) “INVASIVENESS RANK” MEANS A RANK ASSIGNED TO A
23 NONNATIVE SPECIES TO SIGNIFY ITS LEVEL OF INVASIVENESS BASED ON THE
24 RESULTS OF AN INVASIVE ASSESSMENT PROTOCOL.

25 (2) “INVASIVENESS RANK” INCLUDES AN INVASIVENESS
26 SIGNIFICANCE RANKING OF HIGH, MEDIUM, LOW, OR INSIGNIFICANT.

27 [(d)] (J) “Landscaping services” includes services for ornamental horticultural
28 design, maintenance, and installation of living plants.

1 [(e) (K) [“Tier 1] **“PROHIBITED** invasive plant” includes invasive plant species
2 that cause or are likely to cause severe harm within the State.

3 [(f) “Tier 2 invasive plant” includes invasive plant species that cause or are likely
4 to cause substantial negative impact within the State.]

5 (L) **“QUALIFIED INDEPENDENT ASSESSOR” MEANS AN INDIVIDUAL OR A
6 TEAM THAT:**

7 (1) **POSSESSES EXTENSIVE FIELD EXPERIENCE IN INVASIVE PLANT
8 SPECIES IN MARYLAND OR IN NEARBY JURISDICTIONS, INCLUDING WASHINGTON
9 D.C., DELAWARE, NEW JERSEY, NEW YORK, PENNSYLVANIA, VIRGINIA, AND WEST
10 VIRGINIA; AND**

11 (2) **HAS ASSESSED INVASIVE PLANT SPECIES WITHOUT SUPERVISION
12 FROM THE DEPARTMENT, THE DEPARTMENT OF NATURAL RESOURCES, OR THE
13 COMMITTEE.**

14 (M) **“WATCH LIST” MEANS A LIST OF PLANT SPECIES THAT:**

15 (1) **HAVE BEEN ASSESSED BY AN EXPERT ASSESSOR IN ACCORDANCE
16 WITH § 9.5–301 OF THIS TITLE;**

17 (2) **WERE NOT DETERMINED BY THE ASSESSMENT TO BE ELIGIBLE
18 FOR CLASSIFICATION AS A PROHIBITED INVASIVE PLANT; AND**

19 (3) **MAY BE REASSESSED IN THE FUTURE.**

20 9.5–201.

21 There is an Invasive Plants Advisory Committee in the Department.

22 9.5–205.

23 The Committee shall:

24 (1) Advise the Secretary regarding regulations necessary to carry out the
25 provisions of this title; [and]

26 (2) (i) Conduct an annual review of the [risk assessment protocol]
27 **ASSESSMENT PROTOCOLS** adopted under § 9.5–301 of this title; and

28 (ii) Report to the Secretary regarding any proposed changes to the
29 risk assessment protocol **OR A REPLACEMENT OF A PROTOCOL; AND**

1 **(3) REVIEW INVASIVE PLANT SPECIES ASSESSMENTS CONDUCTED IN**
2 **ACCORDANCE WITH § 9.5–301 OF THIS TITLE TO ADVISE THE SECRETARY ON WHICH**
3 **PLANTS TO CLASSIFY AS PROHIBITED INVASIVE PLANTS FOR INCLUSION ON THE**
4 **CONSOLIDATED LIST OF MARYLAND INVASIVE PLANT SPECIES.**

5 9.5–301.

6 (a) The Secretary, with the advice of **THE SECRETARY OF NATURAL**
7 **RESOURCES AND** the Committee, shall:

8 (1) On or before October 1, **[2012] 2024**, adopt regulations that:

9 (i) Establish **[a science–based risk assessment protocol]**
10 **PROFESSIONALLY RECOGNIZED ASSESSMENT PROTOCOLS** for invasive plants that:

11 1. Will serve as a basis for **[creating a two–tiered] THE**
12 **regulatory approach for controlling invasive plants in the State; [and]**

13 2. Considers the harm, as determined by the Secretary, that
14 **invasive plants cause in the State, including:**

15 A. **[Economic harm;**

16 **B.] Ecological harm; AND**

17 **[C.] B.** Environmental harm; and

18 3. **MAY CONSIDER ADDITIONAL HARM, AS DETERMINED**
19 **BY THE EXPERT ASSESSOR, THAT INVASIVE PLANTS CAUSE IN THE STATE,**
20 **INCLUDING:**

21 **A. ECONOMIC HARM; AND**

22 **[D.] B.** Harm to human health;

23 (ii) Govern administrative orders that the Secretary may issue to
24 **enforce this subtitle; and**

25 (iii) Establish a procedure for the approval required under § 9.5–302
26 **of this subtitle for activities involving [tier 1] PROHIBITED invasive plants.**

27 (2) **[On] SUBJECT TO § 9.5–301.1 OF THIS SUBTITLE, ON** or before
28 **October 1, [2013] 2024**, adopt regulations that:

1 (i) Establish a list of [tier 1] **PROHIBITED INVASIVE** plants [and
2 tier 2 plants] in accordance with [the risk] AN assessment protocol adopted under
3 paragraph (1) of this subsection;

4 (ii) Establish a procedure for classification or declassification of an
5 invasive plant as a [tier 1] **PROHIBITED** invasive plant [or a tier 2 invasive plant];

6 (iii) Phase in the implementation of the requirements of this subtitle
7 with consideration of the economic impact of these requirements on nurseries, landscapers,
8 plant wholesalers, plant retailers, and any other industry; **AND**

9 (iv) Establish a procedure for the disposal of [tier 1] **PROHIBITED**
10 **INVASIVE** plants[;

11 (v) Designate the format, size, and content of the sign required
12 under § 9.5–302(b)(1) of this subtitle; and

13 (vi) Provide for the distribution of a list of tier 2 invasive plants to
14 licensed nurseries, plant dealers, and plant brokers on an annual basis].

15 (b) (1) The Secretary shall classify as a [tier 1] **PROHIBITED** invasive plant
16 [or a tier 2 invasive plant] each plant identified as invasive in the National Park Service's
17 and U.S. Fish and Wildlife Service's Plant Invaders of Mid-Atlantic Natural Areas.

18 (2) Nothing in this section may be construed as limiting the Secretary's
19 authority to classify as a [tier 1] **PROHIBITED** invasive plant [or a tier 2] AN invasive plant
20 [plants] not identified as invasive in the National Park Service's and U.S. Fish and Wildlife
21 Service's Plant Invaders of Mid-Atlantic Natural Areas.

22 **(C) (1) IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION, AN**
23 **EXPERT ASSESSOR SHALL:**

24 **(I) ASSESS A NONNATIVE PLANT SPECIES ESTABLISHED IN**
25 **NATURAL AREAS WITHIN THE STATE;**

26 **(II) DETERMINE THE INVASIVENESS RANK OF THE NONNATIVE**
27 **PLANT SPECIES; AND**

28 **(III) 1. NOTIFY THE COMMITTEE THAT THE NONNATIVE**
29 **PLANT SPECIES IS ASSESSED AS AN INVASIVE PLANT IF THE INVASIVENESS RANK IS**
30 **HIGH OR MEDIUM; OR**

31 **2. NOTIFY THE COMMITTEE THAT THE NONNATIVE**
32 **PLANT SPECIES MAY BE PLACED ON THE WATCH LIST IF THE INVASIVENESS RANK**
33 **IS LOW OR INSIGNIFICANT.**

1 **(2) IN CARRYING OUT THE REQUIREMENTS OF PARAGRAPH (1) OF**
2 **THIS SUBSECTION, AN EXPERT ASSESSOR SHALL FOLLOW THE INVASIVE PLANT**
3 **SPECIES STATUS ASSESSMENT PROTOCOL THAT INCLUDES CONSIDERATION OF**
4 **ECOLOGICAL FACTORS AND ENVIRONMENTAL FACTORS.**

5 **(D) (1) IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION, AN**
6 **EXPERT ASSESSOR SHALL:**

7 **(I) ASSESS AN EARLY DETECTION RAPID RESPONSE (EDRR)**
8 **PLANT SPECIES;**

9 **(II) DETERMINE THE INVASIVENESS RANK OF THE EDRR**
10 **PLANT SPECIES; AND**

11 **(III) 1. NOTIFY THE COMMITTEE THAT THE EDRR PLANT**
12 **SPECIES IS ASSESSED AS AN INVASIVE PLANT IF THE INVASIVENESS RANK IS HIGH**
13 **OR MEDIUM; OR**

14 **2. NOTIFY THE COMMITTEE THAT THE EDRR PLANT**
15 **SPECIES MAY BE PLACED ON THE WATCH LIST IF THE INVASIVENESS RANK IS LOW**
16 **OR INSIGNIFICANT.**

17 **(2) IN CARRYING OUT THE REQUIREMENTS OF PARAGRAPH (1) OF**
18 **THIS SUBSECTION, AN EXPERT ASSESSOR SHALL FOLLOW:**

19 **(I) THE INVASIVE PLANT SPECIES STATUS ASSESSMENT**
20 **PROTOCOL IF:**

21 **1. THE EDRR PLANT SPECIES IS PRESENT IN AT LEAST**
22 **ONE NATIVE SPECIES HABITAT IN THE STATE; AND**

23 **2. THE ECOLOGICAL AND ENVIRONMENTAL IMPACT OF**
24 **THE SPECIES IN THE STATE MAY BE EFFECTIVELY ASSESSED UNDER THE**
25 **PROTOCOL; AND**

26 **(II) AN INVASIVE PLANT RISK ASSESSMENT PROTOCOL IF:**

27 **1. THE EDRR PLANT SPECIES IS NOT PRESENT**
28 **ANYWHERE IN THE STATE; OR**

29 **2. A. THE EDRR PLANT SPECIES IS PRESENT IN THE**
30 **STATE; AND**

1 **B. THE ECOLOGICAL AND ENVIRONMENTAL IMPACT OF**
2 **THE SPECIES IN THE STATE CANNOT BE EFFECTIVELY ASSESSED UNDER THE**
3 **INVASIVE PLANT SPECIES STATUS ASSESSMENT PROTOCOL.**

4 **(E) (1) IN ACCORDANCE WITH § 9.5–205 OF THIS TITLE AND PARAGRAPH**
5 **(2) OF THIS SUBSECTION, THE COMMITTEE SHALL REVIEW THE INVASIVE PLANT**
6 **SPECIES ASSESSMENT CONDUCTED BY AN EXPERT ASSESSOR.**

7 **(2) IF THE ASSESSMENT IS ACCURATE AND SUFFICIENT AND THE**
8 **INVASIVENESS RANK IS:**

9 **(I) HIGH OR MEDIUM, THE COMMITTEE SHALL ADVISE THE**
10 **SECRETARY TO CLASSIFY THE PLANT AS A PROHIBITED INVASIVE PLANT; OR**

11 **(II) LOW OR INSIGNIFICANT, THE COMMITTEE SHALL PLACE**
12 **THE PLANT ON THE WATCH LIST.**

13 **(3) THE SECRETARY SHALL DETERMINE WHETHER TO CLASSIFY A**
14 **PLANT SPECIES AS A PROHIBITED INVASIVE PLANT ON REVIEWING THE ADVICE OF**
15 **THE COMMITTEE.**

16 **9.5–301.1.**

17 **(A) THE REGULATIONS ADOPTED UNDER § 9.5–301 OF THIS SUBTITLE**
18 **SHALL CLASSIFY AS PROHIBITED INVASIVE PLANTS ALL TERRESTRIAL PLANTS**
19 **CLASSIFIED BY REGULATION BEFORE JANUARY 1, 2024, AS A TIER 1 OR TIER 2**
20 **INVASIVE PLANT.**

21 **(B) IN ADDITION TO THE PROHIBITED INVASIVE PLANTS SET FORTH IN**
22 **SUBSECTION (A) OF THIS SECTION, THE SECRETARY MAY CLASSIFY, BY**
23 **REGULATION, A PLANT SPECIES AS A PROHIBITED INVASIVE PLANT IN ACCORDANCE**
24 **WITH § 9.5–301 OF THIS SUBTITLE.**

25 **(C) THE SECRETARY SHALL INCLUDE ON THE CONSOLIDATED LIST OF**
26 **MARYLAND INVASIVE PLANT SPECIES AN INVASIVE PLANT CLASSIFIED AS A**
27 **PROHIBITED INVASIVE PLANT IN ACCORDANCE WITH § 9.5–301 OF THIS TITLE AND**
28 **SUBSECTIONS (A) AND (B) OF THIS SECTION.**

29 **9.5–301.2.**

1 (A) (1) THE DEPARTMENT AND THE DEPARTMENT OF NATURAL
2 RESOURCES EACH SHALL POST ON ITS WEBSITE THE CONSOLIDATED LIST OF
3 MARYLAND INVASIVE PLANT SPECIES AND THE WATCH LIST.

4 (2) THE UNIVERSITY OF MARYLAND EXTENSION SHALL POST A LINK
5 TO THE CONSOLIDATED LIST OF MARYLAND INVASIVE PLANT SPECIES AND THE
6 WATCH LIST ON ITS WEBSITE.

7 (B) ON AN ANNUAL BASIS, THE DEPARTMENT SHALL DISTRIBUTE THE
8 CONSOLIDATED LIST OF MARYLAND INVASIVE PLANT SPECIES AND THE WATCH
9 LIST TO LICENSED NURSERIES, PLANT DEALERS, AND PLANT BROKERS.

10 9.5–302.

11 (a) [(1)] This [subsection] SECTION does not apply to the transfer, lease, sale,
12 or purchase of real property on which [an] A PROHIBITED invasive plant is located.

13 [(2)] (B) (1) Except as provided in paragraph [(3)] (2) of this
14 subsection and in accordance with regulations adopted by the Secretary, a person may not
15 propagate, import, transfer, sell, purchase, transport, or introduce any living part of a [tier
16 1] PROHIBITED invasive plant in the State.

17 [(3)] (2) A person may conduct an activity prohibited under paragraph
18 [(2)] (1) of this subsection if:

19 (i) The person receives approval from the Secretary before
20 conducting the activity; and

21 (ii) The activity is for the purpose of:

- 22 1. Disposing of the PROHIBITED invasive plant;
- 23 2. Controlling the PROHIBITED invasive plant;
- 24 3. Using the PROHIBITED invasive plant for research or
25 educational purposes; or
- 26 4. Exporting the PROHIBITED invasive plant out of the
27 State.

28 (b) In accordance with regulations adopted by the Secretary, a person may not:

29 (1) Sell or offer for sale at a retail outlet a tier 2 invasive plant unless the
30 retail outlet posts in a conspicuous manner in proximity to all tier 2 plant displays, a sign
31 identifying the plants as tier 2 plants; or

1 (2) Provide landscaping services to plant or supply for planting a tier 2
2 invasive plant unless the person provides to its customer a list of tier 2 invasive plants.]

3 9.5–303.

4 (a) On finding a [tier 1] **PROHIBITED INVASIVE** plant in violation of [§
5 9.5–302(a)(2)] **§ 9.5–302(B)(1)** of this subtitle, the Secretary may:

6 (1) Issue a written condemnation seizure order;

7 (2) Mark or tag the plant in a conspicuous manner; and

8 (3) Provide written notice to the owner, tenant, or person in charge of the
9 premises.

10 (b) (1) On notice from the Secretary, a person shall dispose of a [tier 1]
11 **PROHIBITED INVASIVE** plant in accordance with regulations adopted by the Secretary.

12 (2) If a [tier 1] **PROHIBITED INVASIVE** plant is not disposed of in
13 accordance with paragraph (1) of this subsection, the Secretary shall:

14 (i) Destroy the plant;

15 (ii) Prepare a statement of facts and a statement of the expense of
16 destruction; and

17 (iii) Provide copies of the statements to the Attorney General.

18 (c) (1) The Attorney General shall institute the appropriate proceeding to
19 collect the expenses due to the Secretary.

20 (2) A copy of the statements prepared under subsection (b)(2) of this section
21 is sufficient evidence to prove a claim under this subsection.

22 [9.5–304.

23 (a) If the Secretary finds that a tier 2 plant does not meet the signage requirement
24 under § 9.5–302(b)(1) of this subtitle, the Secretary shall:

25 (1) Issue a stop sale order; and

26 (2) Mark or tag the plant in a conspicuous manner.

27 (b) The Secretary shall give written notice of a finding made under subsection (a)
28 of this section to the owner, tenant, or person in charge of the premises.

1 (c) A stop sale order issued under this section shall remain in effect until the
2 required signage is posted.]

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
4 1, 2024.