
By: **Senators Frosh, Hooper, Conway, and Pinsky**
Introduced and read first time: January 31, 2003
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Nonnative Aquatic Organisms - State of Nuisance - Abatement and**
3 **Summary Abatement Procedures**

4 FOR the purpose of authorizing the Secretary of Natural Resources to adopt certain
5 regulations to prohibit the importation, possession, or introduction of certain
6 nonnative aquatic organisms; authorizing the Department of Natural Resources
7 to enter and inspect certain property for a certain purpose and subject to a
8 certain requirement; requiring the Secretary to consult certain persons and
9 certain resources when making a certain determination; authorizing the
10 Department to seize and dispose of certain organisms; requiring the Secretary to
11 serve a certain notice and a certain abatement order to a certain person in the
12 event of a certain state of nuisance; authorizing the Secretary to file a certain
13 complaint under certain circumstances; authorizing the Secretary to abate
14 summarily a certain state of nuisance under a certain circumstance; requiring
15 the Secretary to serve or attach certain orders under certain circumstances;
16 authorizing the Secretary to enter certain property and perform certain work
17 under certain circumstances; requiring the Secretary to provide notice of certain
18 charges to a certain person, and authorizing the Secretary to file suit under a
19 certain circumstance; prohibiting a person from interfering with or refusing
20 entry to certain persons; providing for certain penalties; defining certain terms;
21 and generally relating to certain procedures for the abatement and summary
22 abatement of certain states of nuisance caused by certain nonnative aquatic
23 organisms.

24 BY adding to
25 Article - Natural Resources
26 Section 4-205.1
27 Annotated Code of Maryland
28 (2000 Replacement Volume and 2002 Supplement)

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

1

Article - Natural Resources

2 4-205.1.

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
4 INDICATED.

5 (2) "AQUATIC ORGANISM" MEANS A FISH OR ANY OTHER ANIMAL THAT
6 LIVES PART OF ITS LIFE IN WATER.

7 (3) "ECOSYSTEM" MEANS A SYSTEM OF LIVING ORGANISMS AND THEIR
8 ENVIRONMENT, EACH INFLUENCING THE LIFE OF THE OTHER AND NECESSARY FOR
9 THE MAINTENANCE OF LIFE.

10 (4) "INTRODUCTION INTO STATE WATERS" INCLUDES USE OF AN
11 ORGANISM AS BAIT IN THE WATERS OF THE STATE.

12 (5) "NATIVE" MEANS HAVING HISTORICALLY LIVED, GROWN, AND
13 REPRODUCED IN STATE WATERS.

14 (6) "NATURALIZED" MEANS DOCUMENTED AS HAVING LIVED, GROWN,
15 AND REPRODUCED IN STATE WATERS FOR MORE THAN 10 YEARS WITHOUT KNOWN
16 HARM TO THE ECOSYSTEM.

17 (7) "NONNATIVE" MEANS OTHER THAN NATIVE OR NATURALIZED.

18 (8) "NUISANCE ORGANISM" MEANS A NONNATIVE ORGANISM THAT
19 FORESEEABLY THREATENS TO ALTER THE ECOSYSTEM OR THE ABUNDANCE AND
20 DIVERSITY OF NATIVE OR NATURALIZED FISH AND OTHER ORGANISMS.

21 (9) "ORGANISM" MEANS A FAMILY OR LOWER TAXA OF FISH OR ANIMAL.

22 (10) "STATE OF NUISANCE" MEANS A CONDITION IN WHICH A NUISANCE
23 ORGANISM FORESEEABLY THREATENS TO ALTER THE ECOSYSTEM OR THE
24 ABUNDANCE AND DIVERSITY OF NATIVE OR NATURALIZED FISH AND OTHER
25 ORGANISMS.

26 (B) THE SECRETARY MAY ADOPT REGULATIONS TO PROHIBIT THE
27 IMPORTATION, POSSESSION, OR INTRODUCTION INTO STATE WATERS OF A
28 NONNATIVE AQUATIC ORGANISM IN ORDER TO PREVENT AN ADVERSE IMPACT ON AN
29 AQUATIC ECOSYSTEM OR THE PRODUCTIVITY OF STATE WATERS.

30 (C) (1) (I) SUBJECT TO THE REQUIREMENT UNDER SUBPARAGRAPH (II)
31 OF THIS PARAGRAPH, THE DEPARTMENT MAY ENTER AND INSPECT A PROPERTY TO
32 DETERMINE WHETHER A STATE OF NUISANCE EXISTS.

33 (II) THE DEPARTMENT SHALL GIVE REASONABLE NOTICE OF AN
34 INTENT TO ENTER THE PROPERTY OF A LANDOWNER, OCCUPANT, OR TENANT OR
35 ANY OTHER PERSON REASONABLY BELIEVED TO BE IN POSSESSION OF A NUISANCE
36 ORGANISM.

1 (2) WHEN MAKING A DETERMINATION REGARDING THE EXISTENCE,
2 IMMINENCE, AND GRAVITY OF A STATE OF NUISANCE, THE SECRETARY SHALL
3 CONSULT APPROPRIATE EXPERTS AND ANY OTHER AVAILABLE SCIENTIFIC
4 RESOURCES.

5 (3) (I) THE DEPARTMENT MAY SEIZE A NUISANCE ORGANISM THAT
6 HAS CREATED OR WILL FORESEEABLY CREATE A STATE OF NUISANCE.

7 (II) THE DEPARTMENT MAY DISPOSE OF A SEIZED NUISANCE
8 ORGANISM IN ANY MANNER DEEMED APPROPRIATE.

9 (D) (1) IF THE SECRETARY FINDS THAT A STATE OF NUISANCE EXISTS BUT
10 DOES NOT PRESENT AN IMMINENT DANGER TO THE HEALTHY BALANCE OF AN
11 ECOSYSTEM, THE SECRETARY SHALL SERVE A WRITTEN NOTICE TO THE PERSON
12 WHO IS CAUSING THE STATE OF NUISANCE AND ORDER THE PERSON TO ABATE THE
13 STATE OF NUISANCE WITHIN A TIME SPECIFIED IN THE NOTICE.

14 (2) THE NOTICE SHALL BE SERVED:

15 (I) ON THE PERSON WHO IS CAUSING THE STATE OF NUISANCE; OR

16 (II) IF THE PERSON WHO IS CAUSING THE STATE OF NUISANCE
17 CANNOT BE FOUND, ON THE OWNER OR OCCUPANT OF THE PROPERTY WHERE THE
18 STATE OF NUISANCE EXISTS.

19 (3) IF THE PERSON SERVED WITH THE NOTICE FAILS TO COMPLY WITH
20 THE REQUIREMENTS OF THE NOTICE OR IF THE PERSON COMPLIES BUT THE STATE
21 OF NUISANCE IS LIKELY TO RECUR ON THE SAME PROPERTY, THE SECRETARY MAY
22 FILE A COMPLAINT IN THE CIRCUIT COURT FOR THE COUNTY WHERE THE STATE OF
23 NUISANCE EXISTS.

24 (4) A COMPLAINT FILED UNDER THIS SUBSECTION MAY SEEK A COURT
25 ORDER REQUIRING THE PERSON SERVED WITH THE NOTICE TO:

26 (I) COMPLY WITH THE REQUIREMENTS OF THE SECRETARY'S
27 ABATEMENT NOTICE;

28 (II) ABATE THE STATE OF NUISANCE WITHIN A TIME SPECIFIED IN
29 THE ORDER; OR

30 (III) PREVENT THE STATE OF NUISANCE FROM RECURRING.

31 (E) (1) IF THE SECRETARY DETERMINES THAT A STATE OF NUISANCE
32 EXISTS THAT PRESENTS AN IMMINENT DANGER TO THE HEALTHY BALANCE OF AN
33 ECOSYSTEM, THE SECRETARY MAY SUMMARILY ABATE THE STATE OF NUISANCE.

34 (2) BEFORE SUMMARILY ABATING A STATE OF NUISANCE UNDER THIS
35 SUBSECTION, THE SECRETARY SHALL, AS APPROPRIATE:

1 (I) IF THE OWNER, TENANT, OR OTHER OCCUPANT OF THE
2 PROPERTY WHERE THE STATE OF NUISANCE EXISTS IS REASONABLY BELIEVED TO
3 BE RESPONSIBLE FOR THE STATE OF NUISANCE, SERVE AN ABATEMENT ORDER ON
4 THE OWNER, TENANT, OR OTHER OCCUPANT;

5 (II) IF THE PROPERTY IS UNOCCUPIED AND THE OWNER CANNOT
6 BE FOUND, ATTACH AN ABATEMENT ORDER TO THE PROPERTY WHERE THE STATE
7 OF NUISANCE EXISTS; OR

8 (III) IF A PERSON OTHER THAN THE PROPERTY OWNER, OCCUPANT,
9 OR TENANT IS REASONABLY BELIEVED TO BE RESPONSIBLE FOR THE STATE OF
10 NUISANCE:

11 1. SERVE AN ABATEMENT ORDER ON THE PERSON
12 RESPONSIBLE; AND

13 2. A. SERVE A COPY OF THE ABATEMENT ORDER ON THE
14 OWNER OF THE PROPERTY WHERE THE STATE OF NUISANCE EXISTS OR, IF THE
15 OWNER CANNOT BE FOUND, ON THE OCCUPANT OR TENANT OF THE PROPERTY; OR

16 B. IF THE PROPERTY IS UNOCCUPIED AND THE OWNER
17 CANNOT BE FOUND, ATTACH A COPY OF THE ABATEMENT ORDER TO THE PROPERTY
18 WHERE THE STATE OF NUISANCE EXISTS.

19 (3) (I) AN ABATEMENT ORDER UNDER THIS SUBSECTION SHALL
20 REQUIRE AND STATE:

21 1. A TIME PERIOD WITHIN WHICH THE PROPERTY OWNER,
22 OCCUPANT, OR TENANT OR ANY OTHER RESPONSIBLE PERSON SHALL ABATE THE
23 STATE OF NUISANCE; AND

24 2. TO THE BEST KNOWLEDGE OF THE DEPARTMENT, THE
25 WORK AND MATERIALS NECESSARY TO ABATE THE STATE OF NUISANCE.

26 (II) THE TIME PERIOD WITHIN WHICH TO ABATE THE STATE OF
27 NUISANCE OR TO COMMENCE ABATEMENT, AS WITHIN THE DISCRETION OF THE
28 SECRETARY, MAY NOT BE LESS THAN 24 HOURS FROM THE DATE AND HOUR THAT
29 THE ORDER IS SERVED.

30 (4) IF THE PROPERTY OWNER, OCCUPANT, OR TENANT OR ANY OTHER
31 RESPONSIBLE PERSON SERVED WITH AN ABATEMENT ORDER UNDER THIS
32 SUBSECTION FAILS TO ABATE OR COMMENCE ABATEMENT OF THE STATE OF
33 NUISANCE WITHIN THE TIME SPECIFIED IN THE ORDER, THE DEPARTMENT MAY:

34 (I) ENTER ON THE PROPERTY; AND

35 (II) AT THE EXPENSE OF THE PROPERTY OWNER, OCCUPANT, OR
36 TENANT OR OTHER RESPONSIBLE PERSON, DO ANY WORK AND USE ANY MATERIALS
37 NECESSARY TO ABATE THE STATE OF NUISANCE.

1 (F) ALL ABATEMENT ACTIVITIES SHALL BE PERFORMED IN ACCORDANCE
2 WITH CRITERIA ESTABLISHED BY THE DEPARTMENT.

3 (G) (1) AS SOON AS THE TOTAL COST OF ANY ABATEMENT ACTIVITIES
4 PERFORMED BY THE DEPARTMENT UNDER THIS SECTION HAS BEEN DETERMINED,
5 THE SECRETARY SHALL PROVIDE A FULL STATEMENT OF CHARGES TO ANY PERSON
6 RESPONSIBLE FOR THE STATE OF NUISANCE.

7 (2) IF, WITHIN 90 DAYS AFTER THE RECEIPT OF CHARGES THE
8 RESPONSIBLE PERSON DOES NOT REMIT PAYMENT TO THE SECRETARY, THE
9 SECRETARY MAY FILE SUIT AGAINST THE PERSON IN THE COUNTY WHERE THE
10 STATE OF NUISANCE WAS ABATED.

11 (H) A PERSON MAY NOT:

12 (1) INTERFERE WITH THE SECRETARY, A REPRESENTATIVE OF THE
13 SECRETARY, OR ANY OTHER INDIVIDUAL ENGAGED IN THE ABATEMENT OR
14 SUMMARY ABATEMENT OF A STATE OF NUISANCE UNDER THIS SECTION; OR

15 (2) REFUSE TO ALLOW THE SECRETARY, A REPRESENTATIVE OF THE
16 SECRETARY, OR ANY OTHER INDIVIDUAL TO ENTER ON ANY PROPERTY FOR THE
17 PURPOSE OF ABATING OR SUMMARILY ABATING A STATE OF NUISANCE UNDER THIS
18 SECTION.

19 (I) IN ADDITION TO ANY OTHER PENALTY PROVIDED UNDER LAW, A PERSON
20 WHO VIOLATES A PROVISION OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND
21 ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 DAYS OR A FINE
22 NOT EXCEEDING \$2,500 OR BOTH.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 June 1, 2003.