
By: **Senators Frosh, Hooper, Conway, and Pinsky**
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Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
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CHAPTER _____

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; specifying that the provisions of this Act are not
7 applicable to certain aquaculture operations or activities; authorizing the
8 Department of Natural Resources to enter and inspect certain property for a
9 certain purpose and subject to a certain requirement; requiring the Secretary to
10 consult certain persons and certain resources when making a certain
11 determination; authorizing the Department to seize and dispose of certain
12 organisms; requiring the Secretary to serve a certain notice and a certain
13 abatement order to a certain person in the event of a certain state of nuisance;
14 authorizing the Secretary to file a certain complaint under certain
15 circumstances; authorizing the Secretary to abate summarily a certain state of
16 nuisance under a certain circumstance; requiring the Secretary to serve or
17 attach certain orders under certain circumstances; authorizing the Secretary to
18 enter certain property and perform certain work under certain circumstances;
19 requiring the Secretary to provide notice of certain charges to a certain person,
20 and authorizing the Secretary to file suit under a certain circumstance;
21 requiring the Department to minimize certain damage and, under a certain
22 circumstance, to repair or reimburse for certain damage; specifying that certain
23 persons may not be held civilly liable for certain damages, except under a
24 certain circumstance; prohibiting a person from interfering with or refusing
25 entry to certain persons; providing for certain penalties; defining certain terms;
26 and generally relating to certain procedures for the abatement and summary
27 abatement of certain states of nuisance caused by certain nonnative aquatic
28 organisms.

1 BY adding to
2 Article - Natural Resources
3 Section 4-205.1
4 Annotated Code of Maryland
5 (2000 Replacement Volume and 2002 Supplement)

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

8 **Article - Natural Resources**

9 4-205.1.

10 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

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

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

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

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

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

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

25 (8) "NUISANCE ORGANISM" MEANS A NONNATIVE ORGANISM THAT WILL
26 FORESEEABLY THREATENS TO ALTER ~~ALTER AND THREATEN TO HARM~~ THE
27 ECOSYSTEM OR THE ABUNDANCE AND DIVERSITY OF NATIVE OR NATURALIZED FISH
28 AND OTHER ORGANISMS.

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

30 (10) "STATE OF NUISANCE" MEANS A CONDITION IN WHICH A NUISANCE
31 ORGANISM WILL FORESEEABLY ~~THREATENS TO ALTER~~ ALTER AND THREATEN TO
32 HARM THE ECOSYSTEM OR THE ABUNDANCE AND DIVERSITY OF NATIVE OR
33 NATURALIZED FISH AND OTHER ORGANISMS.

34 (B) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION,
35 THE SECRETARY MAY ADOPT REGULATIONS TO PROHIBIT THE IMPORTATION,

1 POSSESSION, OR INTRODUCTION INTO STATE WATERS OF A NONNATIVE AQUATIC
2 ORGANISM IN ORDER TO PREVENT AN ADVERSE IMPACT ON AN AQUATIC ECOSYSTEM
3 OR THE PRODUCTIVITY OF STATE WATERS.

4 (2) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO:

5 (I) AN AQUACULTURE OPERATION FOR WHICH THE DEPARTMENT
6 HAS ISSUED A PERMIT UNDER SUBTITLE 11A OF THIS TITLE; OR

7 (II) THE POSSESSION, IMPORTATION, OR TRANSPORT OF A
8 NONNATIVE AQUATIC ORGANISM FOR PURPOSES RELATED TO A PERMITTED
9 AQUACULTURE OPERATION.

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

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

17 (2) (I) WHEN MAKING A DETERMINATION REGARDING THE
18 EXISTENCE, IMMINENCE, AND GRAVITY OF A STATE OF NUISANCE, THE SECRETARY
19 SHALL CONSULT APPROPRIATE EXPERTS AND ANY OTHER AVAILABLE SCIENTIFIC
20 RESOURCES.

21 (II) THE DEPARTMENT SHALL INVESTIGATE AND DETERMINE. TO
22 THE EXTENT POSSIBLE, THE PERSON WHO IS CAUSING OR HAS CAUSED THE STATE
23 OF NUISANCE.

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

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

28 (D) (1) IF THE SECRETARY FINDS THAT A STATE OF NUISANCE EXISTS BUT
29 DOES NOT PRESENT AN IMMINENT DANGER TO THE HEALTHY BALANCE OF AN
30 ECOSYSTEM, THE SECRETARY SHALL SERVE A WRITTEN NOTICE TO THE PERSON
31 ~~WHO IS CAUSING~~ DETERMINED TO HAVE CAUSED THE STATE OF NUISANCE AND
32 ORDER THE PERSON TO ABATE THE STATE OF NUISANCE WITHIN A TIME SPECIFIED
33 IN THE NOTICE.

34 (2) THE NOTICE SHALL BE SERVED:

35 (I) ON THE PERSON ~~WHO IS CAUSING~~ DETERMINED TO HAVE
36 CAUSED THE STATE OF NUISANCE; OR

1 (II) IF THE PERSON ~~WHO IS CAUSING~~ DETERMINED TO HAVE
2 CAUSED THE STATE OF NUISANCE CANNOT BE FOUND, ON THE OWNER OR
3 OCCUPANT OF THE PROPERTY WHERE THE STATE OF NUISANCE EXISTS.

4 (3) IF THE PERSON SERVED WITH THE NOTICE FAILS TO COMPLY WITH
5 THE REQUIREMENTS OF THE NOTICE OR IF THE PERSON COMPLIES BUT THE STATE
6 OF NUISANCE IS LIKELY TO RECUR ON THE SAME PROPERTY, THE SECRETARY MAY
7 FILE A COMPLAINT IN THE CIRCUIT COURT FOR THE COUNTY WHERE THE STATE OF
8 NUISANCE EXISTS.

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

11 (I) COMPLY WITH THE REQUIREMENTS OF THE SECRETARY'S
12 ABATEMENT NOTICE;

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

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

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

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

21 (I) IF THE OWNER, TENANT, OR OTHER OCCUPANT OF THE
22 PROPERTY WHERE THE STATE OF NUISANCE EXISTS IS REASONABLY BELIEVED TO
23 ~~BE RESPONSIBLE FOR HAVE CAUSED~~ THE STATE OF NUISANCE, SERVE AN
24 ABATEMENT ORDER ON THE OWNER, TENANT, OR OTHER OCCUPANT;

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

28 (III) IF A PERSON OTHER THAN THE PROPERTY OWNER, OCCUPANT,
29 OR TENANT IS REASONABLY BELIEVED TO ~~BE RESPONSIBLE FOR~~ HAVE CAUSED THE
30 STATE OF NUISANCE:

31 1. SERVE AN ABATEMENT ORDER ON ~~THE~~ THAT PERSON
32 ~~RESPONSIBLE~~; AND

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

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

4 (3) (I) AN ABATEMENT ORDER UNDER THIS SUBSECTION SHALL
5 REQUIRE AND STATE:

6 1. A TIME PERIOD WITHIN WHICH THE PROPERTY OWNER,
7 OCCUPANT, OR TENANT OR ANY OTHER ~~RESPONSIBLE~~ PERSON DETERMINED TO
8 HAVE CAUSED THE STATE OF NUISANCE SHALL ABATE THE STATE OF NUISANCE;
9 AND

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

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

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

20 (I) ENTER ON THE PROPERTY; AND

21 (II) AT THE EXPENSE OF THE PROPERTY OWNER, OCCUPANT, OR
22 TENANT OR ANY OTHER RESPONSIBLE PERSON DETERMINED TO HAVE WILLFULLY
23 OR NEGLIGENTLY CAUSED THE STATE OF NUISANCE, DO ANY WORK AND USE ANY
24 MATERIALS NECESSARY TO ABATE THE STATE OF NUISANCE.

25 (5) (I) 1. AS SOON AS THE TOTAL COST OF ANY ABATEMENT
26 ACTIVITIES PERFORMED BY THE DEPARTMENT UNDER THIS SUBSECTION HAS BEEN
27 DETERMINED, THE SECRETARY SHALL PROVIDE A FULL STATEMENT OF CHARGES TO
28 ANY PERSON DETERMINED TO HAVE WILLFULLY OR NEGLIGENTLY CAUSED THE
29 STATE OF NUISANCE.

30 2. IF, WITHIN 90 DAYS AFTER THE RECEIPT OF CHARGES THE
31 PERSON DOES NOT REMIT PAYMENT TO THE SECRETARY, THE SECRETARY MAY FILE
32 SUIT AGAINST THE PERSON IN THE COUNTY WHERE THE STATE OF NUISANCE WAS
33 ABATED.

34 (II) 1. TO THE EXTENT POSSIBLE, THE DEPARTMENT SHALL
35 MINIMIZE PROPERTY DAMAGE DURING ABATEMENT ACTIVITIES.

36 2. IF THE DEPARTMENT HAS NOT DETERMINED THAT THE
37 PROPERTY OWNER, OCCUPANT, OR TENANT CAUSED THE STATE OF NUISANCE, THE
38 DEPARTMENT SHALL:

1 A. MAKE REASONABLE EFFORTS TO REPAIR ANY PROPERTY
2 DAMAGE CAUSED BY ABATEMENT ACTIVITIES; OR

3 B. REIMBURSE THE OWNER, OCCUPANT, OR TENANT FOR
4 REPAIR OR REPLACEMENT COSTS ASSOCIATED WITH DAMAGES CAUSED BY
5 ABATEMENT ACTIVITIES.

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

8 (G) ~~(+) AS SOON AS THE TOTAL COST OF ANY ABATEMENT ACTIVITIES~~
9 ~~PERFORMED BY THE DEPARTMENT UNDER THIS SECTION HAS BEEN DETERMINED,~~
10 ~~THE SECRETARY SHALL PROVIDE A FULL STATEMENT OF CHARGES TO ANY PERSON~~
11 ~~RESPONSIBLE FOR THE STATE OF NUISANCE.~~

12 ~~(2) IF, WITHIN 90 DAYS AFTER THE RECEIPT OF CHARGES THE~~
13 ~~RESPONSIBLE PERSON DOES NOT REMIT PAYMENT TO THE SECRETARY, THE~~
14 ~~SECRETARY MAY FILE SUIT AGAINST THE PERSON IN THE COUNTY WHERE THE~~
15 ~~STATE OF NUISANCE WAS ABATED AN OWNER, OCCUPANT, OR TENANT OF A~~
16 ~~PROPERTY ON WHICH THE DEPARTMENT HAS PERFORMED ABATEMENT ACTIVITIES~~
17 ~~MAY NOT BE HELD CIVILLY LIABLE FOR DAMAGES CLAIMED BY A THIRD PARTY AS A~~
18 ~~RESULT OF ABATEMENT ACTIVITIES PERFORMED BY THE DEPARTMENT, UNLESS~~
19 ~~THE OWNER, OCCUPANT, OR TENANT HAS BEEN DETERMINED TO HAVE WILLFULLY~~
20 ~~OR NEGLIGENTLY CAUSED THE STATE OF NUISANCE.~~

21 (H) A PERSON MAY NOT:

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

25 (2) REFUSE TO ALLOW THE SECRETARY, A REPRESENTATIVE OF THE
26 SECRETARY, OR ANY OTHER INDIVIDUAL TO ENTER ON ANY PROPERTY FOR THE
27 PURPOSE OF ABATING OR SUMMARILY ABATING A STATE OF NUISANCE UNDER THIS
28 SECTION.

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

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

