

Chapter 589

(Senate Bill 915)

AN ACT concerning

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

FOR the purpose of altering the regulatory approach for controlling invasive plant species in the State, including repealing certain provisions of law relating to a two-tiered regulatory approach and requiring the Secretary of Agriculture to establish a certain list of prohibited invasive plants by regulation in a certain manner on or before a certain date; establishing certain protocols for assessing certain nonnative plants and determining whether those plants are invasive or whether the plants may be placed on a certain watch list; requiring the Invasive Plants Advisory Committee in the Department of Agriculture to review certain invasive species assessments and data to advise the Secretary in a certain manner; requiring the Committee to review the qualifications of a qualified independent assessor; requiring the Secretary to include on a certain consolidated list certain invasive plants classified as a prohibited invasive plant in a certain manner; requiring the Department of Agriculture and the Department of Natural Resources each to post on its website a certain consolidated list and certain watch list; requiring the University of Maryland Extension to post a link to certain lists on its website; requiring the Department of Agriculture to distribute certain lists to certain nurseries, plant dealers, and plant brokers in a certain manner; authorizing the State Highway Administration to conduct certain activities related to controlling and disposing of invasive plant species under certain circumstances and in a certain manner; and generally relating to the regulation of invasive plant species.

BY repealing and reenacting, with amendments,

Article – Agriculture

Section 9.5–101, 9.5–205, 9.5–301, 9.5–302, and 9.5–303

Annotated Code of Maryland

(2016 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, without amendments,

Article – Agriculture

Section 9.5–201

Annotated Code of Maryland

(2016 Replacement Volume and 2023 Supplement)

BY adding to

Article – Agriculture

Section 9.5–301.1 and 9.5–301.2

Annotated Code of Maryland

(2016 Replacement Volume and 2023 Supplement)

BY repealing

Article – Agriculture

Section 9.5–304

Annotated Code of Maryland

(2016 Replacement Volume and 2023 Supplement)

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

Article – Agriculture

9.5–101.

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

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

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

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

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

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

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

(ii) **CAUSING SIGNIFICANT DAMAGE; AND**

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

(ii) **HAS NOT YET BEEN FOUND IN THE STATE.**

(f) **“EXPERT ASSESSOR” MEANS:**

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

(2) A QUALIFIED INDEPENDENT ASSESSOR.

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

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

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

[(i)] 1. Economic harm;

[(ii)] 2. Ecological harm;

[(iii)] 3. Environmental harm; or

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

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

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

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

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

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

[(e)] (K) [“Tier 1] “PROHIBITED 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.]

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

(1) POSSESSES ~~EXTENSIVE~~ AT LEAST 2 YEARS OF FIELD EXPERIENCE IN INVASIVE PLANT SPECIES IN MARYLAND OR IN NEARBY JURISDICTIONS, INCLUDING WASHINGTON, D.C., DELAWARE, NEW JERSEY, NEW YORK, PENNSYLVANIA, VIRGINIA, AND WEST VIRGINIA; AND

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

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

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

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

(3) MAY BE REASSESSED IN THE FUTURE.

9.5–201.

There is an Invasive Plants Advisory Committee in the Department.

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] **ASSESSMENT PROTOCOLS** adopted under § 9.5–301 of this title; and

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

(3) (I) ~~REVIEW~~ IN CONSULTATION WITH THE SECRETARY AND THE SECRETARY OF NATURAL RESOURCES, REVIEW THE QUALIFICATIONS OF THE QUALIFIED INDEPENDENT ASSESSOR; AND

(II) REPORT TO THE SECRETARY ANY PROPOSED CHANGES TO THE QUALIFICATIONS OF THE QUALIFIED INDEPENDENT ASSESSOR;

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

(5) (I) REVIEW ANY DATA SUBMITTED TO THE COMMITTEE THAT INDICATES A CULTIVAR, SELECTION, OR INFRA–SPECIFIC HYBRID OF A PROHIBITED INVASIVE PLANT IS NOT INVASIVE; AND

(II) IF THE DATA SUBMITTED UNDER ITEM (I) OF THIS ITEM IS DEEMED ACCURATE AND SUFFICIENT, ADVISE THE SECRETARY TO DECLASSIFY OR PREEMPTIVELY NOT CLASSIFY THE CULTIVAR, SELECTION, OR INFRA–SPECIFIC HYBRID AS A PROHIBITED INVASIVE PLANT.

9.5–301.

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

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

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

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

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

A. [Economic harm;

B.] Ecological harm; **AND**

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

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

A. ECONOMIC HARM; AND

[D.] B. 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] PROHIBITED** invasive plants.

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

(i) Establish a list of **[tier 1] PROHIBITED INVASIVE** plants **[and tier 2 plants]** in accordance with **[the risk] AN** 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] PROHIBITED** 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; **AND**

(iv) Establish a procedure for the disposal of **[tier 1] PROHIBITED INVASIVE** 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].

(b) (1) The Secretary shall classify as a **[tier 1] PROHIBITED** invasive plant **[or a tier 2 invasive plant]** each plant identified as invasive in the National Park Service’s and U.S. Fish and Wildlife Service’s Plant Invaders of Mid–Atlantic Natural Areas **IF THE PLANT IS ASSESSED AS AN INVASIVE PLANT SPECIES IN ACCORDANCE WITH SUBSECTIONS (C) AND (D) OF THIS SECTION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(II) AN INVASIVE PLANT RISK ASSESSMENT PROTOCOL IF:

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

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

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

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

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

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

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

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

9.5–301.1.

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

(B) EACH TERRESTRIAL PLANT CLASSIFIED BY REGULATION BEFORE JANUARY 1, 2024, AS A TIER 2 INVASIVE PLANT SHALL BE ASSESSED IN ACCORDANCE WITH § 9.5-301 OF THIS SUBTITLE BY DECEMBER 31, 2025, AND SHALL BE:

(1) IF THE RESULTS OF THE ASSESSMENT DETERMINE THE PLANT IS AN INVASIVE PLANT, CLASSIFIED AS A PROHIBITED INVASIVE PLANT UNDER THE REGULATIONS ADOPTED UNDER § 9.5-301 OF THIS SUBTITLE; OR

(2) IF THE RESULTS OF THE ASSESSMENT DETERMINE THE PLANT IS NOT AN INVASIVE PLANT, PLACED ON THE ~~WATCH LIST~~ WATCH LIST.

~~(B)~~ (C) IN ADDITION TO THE PROHIBITED INVASIVE PLANTS SET FORTH IN SUBSECTION (A) OF THIS SECTION, THE SECRETARY MAY CLASSIFY, BY REGULATION, A PLANT SPECIES AS A PROHIBITED INVASIVE PLANT IN ACCORDANCE WITH § 9.5-301 OF THIS SUBTITLE.

~~(C)~~ (D) THE SECRETARY SHALL INCLUDE ON THE CONSOLIDATED LIST OF MARYLAND INVASIVE PLANT SPECIES AN INVASIVE PLANT CLASSIFIED AS A PROHIBITED INVASIVE PLANT IN ACCORDANCE WITH § 9.5-301 OF THIS ~~THE~~ SUBTITLE AND ~~SUBSECTIONS (A) AND (B) OF THIS SECTION.~~

9.5-301.2.

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

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

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

9.5-302.

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

[(2)] **(B) (1)** Except as provided in ~~paragraph~~ **PARAGRAPHS (2) AND [(3)] (2)** 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] **PROHIBITED** invasive plant in the State.

[(3)] **(2)** A person may, IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE DEPARTMENT, conduct an activity prohibited under paragraph [(2)] **(1)** 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:

1. Disposing of the **PROHIBITED** invasive plant;
2. Controlling the **PROHIBITED** invasive plant;
3. Using the **PROHIBITED** invasive plant for research or educational purposes; or
4. Exporting the **PROHIBITED** invasive plant out of the State.

(3) (I) NOTWITHSTANDING PARAGRAPH (2)(I) OF THIS SUBSECTION AND SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE STATE HIGHWAY ADMINISTRATION MAY CONDUCT AN ACTIVITY PROHIBITED UNDER PARAGRAPH (1) OF THIS SUBSECTION FOR THE PURPOSE OF CONTROLLING OR DISPOSING OF A PROHIBITED INVASIVE PLANT ALONG STATE HIGHWAYS WITHOUT PRIOR APPROVAL OF THE SECRETARY.

(II) THE STATE HIGHWAY ADMINISTRATION SHALL CONTROL OR DISPOSE OF PROHIBITED INVASIVE PLANTS ALONG STATE HIGHWAYS UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IN A MANNER CONSISTENT WITH REGULATIONS ADOPTED BY THE DEPARTMENT.

(III) THE DEPARTMENT SHALL NOTIFY THE STATE HIGHWAY ADMINISTRATION OF ANY CHANGES TO REGULATIONS ADOPTED BY THE DEPARTMENT THAT IMPACT THE CONTROL OR DISPOSAL OF PROHIBITED INVASIVE PLANTS.

[(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] **PROHIBITED INVASIVE** plant in violation of [§ 9.5–302(a)(2)] **§ 9.5–302(B)(1)** of this subtitle, the Secretary 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] **PROHIBITED INVASIVE** plant in accordance with regulations adopted by the Secretary.

(2) If a [tier 1] **PROHIBITED INVASIVE** 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 Attorney General.

(c) (1) The 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.]

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

Approved by the Governor, May 9, 2024.