

SENATE, No. 2301

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED JUNE 6, 2016

Sponsored by:
Senator JIM WHELAN
District 2 (Atlantic)

SYNOPSIS

Establishes requirements for sale and planting of running bamboo.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning running bamboo and supplementing Titles 4
2 and 13 of the Revised Statutes, and P.L.1960, c.39 (C.56:8-1 et
3 seq.).

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. a. No person shall sell running bamboo in the State unless
9 that person is a nurseryman who possesses a certification from the
10 department pursuant to R.S.4:7-15 et seq. A person who violates
11 this subsection shall be liable to a civil penalty of \$100, to be
12 collected in a summary proceeding pursuant to the “Penalty
13 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.).
14 If the violation is of a continuing nature, each day during which it
15 continues shall constitute a separate and distinct offense. The
16 municipal court and the Superior Court shall have jurisdiction to
17 enforce the “Penalty Enforcement Law of 1999.”

18 b. The Department of Agriculture, the Department of
19 Environmental Protection, and any county or municipality shall
20 have the authority to enforce the provisions of this section.

21 c. As used in this section, “running bamboo” means any
22 bamboo in the genus *Phyllostachys*, including *Phyllostachys*
23 *aureosulcata*.

24
25 2. a. (1) No person shall plant running bamboo in the State
26 unless that person is a landscape architect licensed pursuant to
27 P.L.1983, c.337 (C.45:3A-1 et al.) or a home improvement
28 contractor registered with the Division of Consumer Affairs in the
29 Department of Law and Public Safety pursuant to P.L.2004, c.16
30 (C.56:8-136 et seq.), or an employee or contractor of a licensed
31 landscape architect or registered home improvement contractor, and
32 the person plants the running bamboo in compliance with the
33 requirements of subsection b. of this section.

34 (2) A person who violates this subsection shall be liable to a civil
35 penalty of \$100, to be collected in a summary proceeding pursuant
36 to the “Penalty Enforcement Law of 1999,” P.L.1999, c.274
37 (C.2A:58-10 et seq.). If the violation is of a continuing nature, each
38 day during which it continues shall constitute a separate and distinct
39 offense. The municipal court and the Superior Court shall have
40 jurisdiction to enforce the “Penalty Enforcement Law of 1999.”

41 b. (1) A licensed landscape architect or registered home
42 improvement contractor, or employee or contractor thereof, shall
43 not plant running bamboo on any property within 100 feet of the
44 property boundary line or a public right-of-way unless: (a) the
45 running bamboo is contained by a properly constructed barrier

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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1 system that prevents the spread of roots underground; or (b) the
2 running bamboo is planted above ground in a container or planter so
3 that it is contained and does not come into contact with the
4 surrounding soil.

5 (2) A licensed landscape architect or registered home
6 improvement contractor who violates this subsection shall be issued
7 a warning for the first offense. For a second or subsequent offense,
8 the licensed landscape architect or registered home improvement
9 contractor shall be liable to a civil penalty of \$100, to be collected
10 in a summary proceeding pursuant to the “Penalty Enforcement
11 Law of 1999.” The municipal court and the Superior Court shall
12 have jurisdiction to enforce the “Penalty Enforcement Law of
13 1999.”

14 c. (1) A person who owns property on which running bamboo
15 is planted pursuant to this section, or a subsequent purchaser of the
16 property or person who takes possession of the property pursuant to
17 a foreclosure or other legal action, shall be responsible for
18 maintaining the running bamboo in compliance with subsection b.
19 of this section. A person who fails to properly maintain the bamboo
20 in compliance with this section shall be liable for any damages
21 caused to any adjacent property by the running bamboo, including,
22 but not limited to, the cost of removal of any running bamboo that
23 grows on the adjacent property.

24 (2) If the spread of running bamboo onto an adjacent property is
25 the result of improper planting of the bamboo by a licensed
26 landscape architect or registered home improvement contractor, in
27 violation of subsection b. of this section, the person who owns the
28 property on which the running bamboo was planted, and who is
29 being held liable for damages to the adjacent property, may seek
30 indemnification from the licensed landscape architect or registered
31 home improvement contractor.

32 d. The Department of Environmental Protection, the
33 Department of Agriculture, and any county or municipality shall
34 have the authority to enforce the provisions of this section.

35 e. This section shall not apply to running bamboo that was
36 planted before the date of enactment of this section.

37 f. As used in this section, “running bamboo” means any
38 bamboo in the genus *Phyllostachys*, including *Phyllostachys*
39 *aureosulcata*.

40
41 3. The Director of the Division of Consumer Affairs in the
42 Department of Law and Public Safety shall require the property
43 condition disclosure statement obtained from the seller, pursuant to
44 paragraph (3) of subsection b. of section 1 of P.L.1999, c.76
45 (C.56:8-19.1), to include the following question: “Are you aware of
46 the presence of any bamboo or running bamboo (*Phyllostachys*
47 *aureosulcata* or other bamboo in the genus *Phyllostachys*) on this
48 property at any time in the past five years? If yes, describe the

1 location of the running bamboo, and any action taken to remove or
2 contain the running bamboo, if known.”

3

4 4. This act shall take effect immediately.

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STATEMENT

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9 This bill would establish requirements for the sale and planting
10 of running bamboo. Running bamboo is defined in the bill as any
11 bamboo in the genus *Phyllostachys*, including *Phyllostachys*
12 *aureosulcata*.

13 Specifically, under the bill, only a certified nurseryman could
14 sell running bamboo in the State. In addition, only licensed
15 landscape architects, registered home improvement contractors, and
16 their employees and contractors could plant running bamboo. Any
17 person who sells or plants running bamboo without the proper
18 qualification would be subject to a \$100 fine. Each day during
19 which the violation continues would constitute a separate offense.
20 Additionally, the bill provides that a licensed landscape architect or
21 registered home improvement contractor who plants running
22 bamboo may not plant it on any property within 100 feet of the
23 property boundary line or a public right-of-way unless certain
24 measures are taken to contain the running bamboo. A licensed
25 landscape architect or registered home improvement contractor who
26 fails to comply with these requirements would be issued a warning
27 for the first offense, and subject to a \$100 fine for a second or
28 subsequent offense.

29 A person who owns property on which running bamboo is
30 planted pursuant to the bill, or a subsequent purchaser of the
31 property or person who takes possession of the property pursuant to
32 a foreclosure, would be responsible for maintaining the running
33 bamboo in compliance with the bill. A person who fails to properly
34 maintain the bamboo would be liable for any damages caused to any
35 adjacent property by the running bamboo. However, if the spread
36 of running bamboo onto an adjacent property is the result of
37 improper planting of the running bamboo by a licensed landscape
38 architect or registered home improvement contractor, the person
39 who owns the property on which the bamboo was planted by seek
40 indemnification from the licensed landscape architect or registered
41 home improvement contractor.

42 Finally, the bill would require the Director of the Division of
43 Consumer Affairs in the Department of Law and Public Safety to
44 require the property condition statement obtained from the seller to
45 include the following question: “Are you aware of the presence of
46 any bamboo or running bamboo (*Phyllostachys aureosulcata* or
47 other bamboo in the genus *Phyllostachys*) on this property at any
48 time in the past five years? If yes, describe the location of the

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1 running bamboo, and any action taken to remove or contain the
2 running bamboo, it known.”

3 Running bamboo has become increasingly popular as a natural
4 barrier and privacy screen around homes. However, if not properly
5 contained, the hardy plant spreads aggressively and can cause
6 damage to concrete sidewalks, home foundations, and other
7 structures. Running bamboo is particularly problematic when it
8 spreads from one property to another, and causes damage to the
9 neighboring property. This can impose significant costs on the
10 neighboring property owner. Several New Jersey municipalities
11 have already adopted ordinances controlling running bamboo. This
12 bill would establish uniform requirements for the planting and
13 selling of running bamboo across the State.