

ASSEMBLY, No. 4460

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED SEPTEMBER 17, 2018

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

SYNOPSIS

Prohibits sale, distribution, or propagation of certain invasive plant species without permit from Department of Agriculture.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the sale, distribution, and propagation of
2 certain invasive plant species and supplementing Title 4 of the
3 Revised Statutes.

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

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8 1. As used in this act:

9 “Department” means the Department of Agriculture.

10 “Invasive plant species” means any living part of the following
11 species or any cultivar, variety, or subspecies thereof, including the
12 seeds or spores of such species: Norway maple (*Acer platanoides*);
13 mimosa or silk tree (*Albizia julibrissin*); porcelain berry
14 (*Ampelopsis glandulosa* var. *brevipedunculata*); Japanese angelica
15 tree (*Aralia elata*); Japanese barberry (*Berberis thunbergii*);
16 Japanese clematis (*Clematis terniflora*); autumn olive (*Elaeagnus*
17 *umbellata*); weeping lovegrass (*Eragrostis curvula*); winged
18 burning bush (*Euonymus alatus*); English ivy (*Hedera helix*);
19 Japanese hop (*Humulus japonicas*); sericea lespedeza (*Lespedeza*
20 *cuneate*); European privet (*Ligustrum vulgare*); Amur honeysuckle
21 (*Lonicera maackii*); Morrow’s honeysuckle (*Lonicera morrowii*);
22 purple loosestrife (*Lythrum salicaria*); Japanese crabapple (*Malus*
23 *toringo*); Chinese silvergrass (*Miscanthus sinensis*); Eurasian water-
24 milfoil (*Myriophyllum spicatum*); Oriental photinia (*Photinia*
25 *villosa*); Callery or Bradford pear (*Pyrus calleryana*); common
26 buckthorn (*Rhamnus cathartica*); jetbead (*Rhodotypos scandens*);
27 multiflora rose (*Rosa multiflora*); European water chestnut (*Trapa*
28 *natans*); Siebold’s arrowwood (*Viburnum sieboldii*); Japanese
29 wisteria (*Wisteria floribunda*); Chinese wisteria (*Wisteria sinensis*);
30 and any other species designated by the department pursuant to
31 section 4 of this act.

32 “Permit” means a permit issued by the department pursuant to
33 section 3 of this act.

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35 2. No person may sell, offer for sale, distribute, or propagate
36 for sale or distribution, an invasive plant species in the State
37 without a permit.

38
39 3. The department shall, pursuant to the “Administrative
40 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules
41 and regulations to create a permitting program for the safe sale,
42 distribution, and propagation of invasive plant species in the State.
43 These rules and regulations shall include, but need not be limited to:

44 a. criteria for permits for limited propagation for sale of an
45 invasive plant species, in ways that prevent or minimize the risk of
46 escape and unintentional propagation in the wild;

47 b. criteria for permits for propagation or distribution of an
48 invasive plant species for educational or research purposes;

- 1 c. general permits as may be necessary for the implementation
2 of the act;
- 3 d. warning labels to be required at the point of sale of invasive
4 plant species that describe appropriate cultivation practices to avoid
5 escape of the invasive plant species;
- 6 e. procedures for the submission of an application for a permit;
- 7 f. a schedule of fees to pay for the costs of the permitting
8 program; and
- 9 g. any other rules or regulations as may be necessary for the
10 implementation of the act.

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12 4. a. The department, in consultation with the Department of
13 Environmental Protection, the New Jersey Agricultural Experiment
14 Station at Rutgers, the State University, the Highlands Water
15 Protection and Planning Council established pursuant to P.L.2004,
16 c.120 (C.13:20-1 et seq.), the Pinelands Commission established
17 pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.), and any other
18 relevant State entity, shall, from time to time, adopt regulations
19 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
20 (C.52:14B-1 et seq.), to designate additional plant species as
21 “invasive plant species” for purposes of this act.

22 b. When determining whether to add a species to the list of
23 invasive plant species, the department shall consider:

- 24 (1) the threat the species poses to native species in the State;
- 25 (2) the threat the species poses to any sensitive habitats or
26 endangered or threatened species in the State;
- 27 (3) the threat the species poses to any historical, cultural, or
28 infrastructure resources in the State; and
- 29 (4) the likelihood that the species will escape intended
30 cultivation areas and propagate uncontrolled in the State.

31 c. In order to designate a plant species an invasive plant
32 species pursuant to this section, the department shall make a finding
33 that the plant species threatens ecological, cultural, historical, or
34 infrastructure resources of the State, and may not designate a plant
35 species an invasive plant species solely because that plant species is
36 not native to New Jersey.

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38 5. The department shall, in consultation with the Department of
39 Environmental Protection, the New Jersey Agricultural Experiment
40 Station at Rutgers, the State University, the Highlands Water
41 Protection and Planning Council established pursuant to P.L.2004,
42 c.120 (C.13:20-1 et seq.), the Pinelands Commission established
43 pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.), and any other
44 relevant State entity, develop education materials for distribution, in
45 a manner the department deems most effective, which identify
46 invasive plant species, cultivation practices to avoid the spread of
47 invasive plant species, and safer alternative plant species for
48 cultivation in the State, where applicable. These educational

1 materials shall be distributed at the point of sale of invasive plant
2 species, and any other locations deemed appropriate by the
3 department.

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5 6. a. Any person who violates this act, or any rule or
6 regulation adopted pursuant thereto, shall be subject to a civil
7 penalty of up to \$100 for a first offense, up to \$200 for a second
8 offense, and up to \$500 for a third or subsequent offense. Any civil
9 penalty imposed pursuant to this subsection may be collected with
10 costs in a summary proceeding pursuant to the "Penalty
11 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
12 The Superior Court shall have jurisdiction to enforce the provisions
13 of the "Penalty Enforcement Law of 1999" in connection with this
14 act.

15 b. The department may institute a civil action in a court of
16 competent jurisdiction for injunctive relief to prohibit or prevent a
17 violation of this act, or any rule or regulation adopted pursuant
18 thereto, and the court may proceed in the action in a summary
19 manner.

20 c. The department shall conduct nursery inspections
21 contemporaneously and in a manner and form similar to inspections
22 conducted pursuant to R.S.4:7-21. The department shall not charge
23 a separate inspection fee pursuant to this section.

24 d. The department may seize and destroy any invasive plant
25 species that forms a basis of a violation of this act or any rule or
26 regulation adopted pursuant thereto.

27 e. The department may compromise and settle any claim for a
28 penalty under this act in such amount in the discretion of the
29 department as may appear appropriate and equitable under all of the
30 circumstances.

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32 7. This act shall take effect on the first day of the 24th month
33 next following enactment, except that the department may take any
34 anticipatory administrative action in advance as may be necessary
35 for the implementation of this act.

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38 STATEMENT

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40 This bill would prohibit the sale, offer for sale, distribution, or
41 propagation for sale or distribution of certain invasive plant species
42 in the State, without first receiving a permit from the Department of
43 Agriculture.

44 The bill covers a group of invasive plant species in the State that
45 are both widespread, and which pose a high risk to the ecology of
46 the State. As defined in the bill, "invasive plant species" includes:
47 Norway maple (*Acer platanoides*); mimosa or silk tree (*Albizia*
48 *julibrissin*); porcelain berry (*Ampelopsis glandulosa* var.

1 *brevipedunculata*); Japanese angelica tree (*Aralia elata*); Japanese
2 barberry (*Berberis thunbergii*); Japanese clematis (*Clematis*
3 *terniflora*); autumn olive (*Elaeagnus umbellata*); weeping lovegrass
4 (*Eragrostis curvula*); winged burning bush (*Euonymus alatus*);
5 English ivy (*Hedera helix*); Japanese hop (*Humulus japonicas*);
6 sericea lespedeza (*Lespedeza cuneate*); European privet (*Ligustrum*
7 *vulgare*); Amur honeysuckle (*Lonicera maackii*); Morrow's
8 honeysuckle (*Lonicera morrowii*); purple loosestrife (*Lythrum*
9 *salicaria*); Japanese crabapple (*Malus toringo*); Chinese silvergrass
10 (*Miscanthus sinensis*); Eurasian water-milfoil (*Myriophyllum*
11 *spicatum*); Oriental photinia (*Photinia villosa*); Callery or Bradford
12 pear (*Pyrus calleryana*); common buckthorn (*Rhamnus cathartica*);
13 jetbead (*Rhodotypos scandens*); multiflora rose (*Rosa multiflora*);
14 European water chestnut (*Trapa natans*); Siebold's arrowwood
15 (*Viburnum sieboldii*); Japanese wisteria (*Wisteria floribunda*);
16 Chinese wisteria (*Wisteria sinensis*). The bill also establishes a
17 procedure for the Department of Agriculture to add additional plant
18 species to the list of those covered by the bill.

19 The bill would prohibit the sale, distribution, or propagation for
20 sale or distribution, of invasive plant species in the State without a
21 permit from the department. The bill would require the department
22 to create a permitting system for the safe distribution of certain
23 invasive plant species, including permits for research or educational
24 purposes. The bill would also require the adoption of labeling
25 requirements, general permits, and any other regulations necessary
26 for the implementation of the bill.

27 The bill would also allow the department to add species to the
28 list of invasive plant species if the department finds that the species
29 threatens ecological, cultural, historical, or infrastructure resources
30 of the State. In determining to classify a species as an invasive
31 plant species, the department would consider: the threat the species
32 poses to native species in the State; the threat the species poses to
33 any sensitive habitats or endangered or threatened species in the
34 State; the threat the species poses to any historical, cultural, or
35 infrastructure resources in the State; and the likelihood that the
36 species will escape intended cultivation areas and propagate in the
37 State. The department would also be required to develop
38 educational materials for distribution at the point of sale and any
39 other locations the department deems appropriate, which identify
40 invasive plant species, recommended cultivation practices to avoid
41 the spread of invasive plant species, and safer alternative plant
42 species for cultivation in the State.

43 A person who sells, offers for sale, distributes, or propagates an
44 invasive plant species for sale or distribution without a permit from
45 the department would be subject to a civil penalty of up to \$100 for
46 a first offense, up to \$200 for a second offense, and up to \$500 for a
47 third or subsequent offense. The department would be authorized to
48 seize and destroy any invasive plant species that forms a basis of a

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1 violation. The department would also be required to conduct
2 nursery inspections in a manner and form similar to inspections for
3 nursery stock conducted pursuant to law.

4 The bill would take effect on the first day of the 24th month after
5 the bill is enacted into law.