

[First Reprint]

SENATE, No. 2186

STATE OF NEW JERSEY
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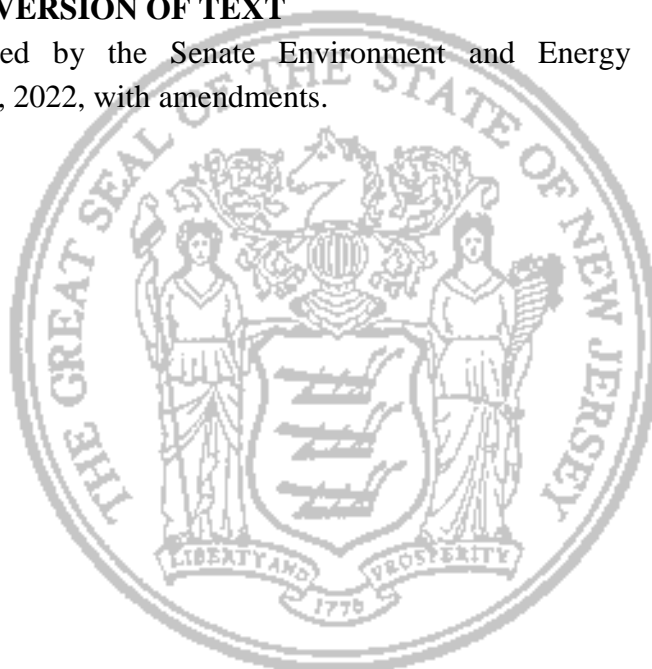
Senators Turner, Diegnan, Zwicker and Durr

SYNOPSIS

Prohibits sale, distribution, or propagation of certain invasive plant species without permit from Department of Agriculture; establishes NJ Invasive Species Council.

CURRENT VERSION OF TEXT

As reported by the Senate Environment and Energy Committee on December 15, 2022, with amendments.



(Sponsorship Updated As Of: 2/27/2023)

1 AN ACT concerning ¹**the sale, distribution, and propagation of**
2 certain¹ invasive plant species and supplementing Title 4 of the
3 Revised Statutes.

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

7
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 ¹tree of heaven (*Ailanthus altissima*)¹; mimosa or silk tree (*Albizia*
14 *julibrissin*); porcelain berry (*Ampelopsis glandulosa* var.
15 *brevipedunculata*); Japanese angelica tree (*Aralia elata*); Japanese
16 barberry (*Berberis thunbergii*); Japanese clematis (*Clematis*
17 *terniflora*); autumn olive (*Elaeagnus umbellata*); weeping lovegrass
18 (*Eragrostis curvula*); winged burning bush (*Euonymus alatus*);
19 English ivy (*Hedera helix*); Japanese hop (*Humulus japonicas*);
20 sericea lespedeza (*Lespedeza cuneate*); European privet (*Ligustrum*
21 *vulgare*); Amur honeysuckle (*Lonicera maackii*); Morrow’s
22 honeysuckle (*Lonicera morrowii*); purple loosestrife (*Lythrum*
23 *salicaria*); Japanese crabapple (*Malus toringo*); Chinese silvergrass
24 (*Miscanthus sinensis*); Eurasian water-milfoil (*Myriophyllum*
25 *spicatum*); Oriental photinia (*Photinia villosa*); Callery or Bradford
26 pear (*Pyrus calleryana*); common buckthorn (*Rhamnus cathartica*);
27 jetbead (*Rhodotypos scandens*); multiflora rose (*Rosa multiflora*);
28 European water chestnut (*Trapa natans*); Siebold's arrowwood
29 (*Viburnum sieboldii*); Japanese wisteria (*Wisteria floribunda*);
30 Chinese wisteria (*Wisteria sinensis*); and any other species
31 designated by the department pursuant to section 4 of this act.

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

34
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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted December 15, 2022.

1 escape and unintentional propagation in the wild;

2 b. ¹criteria for exempting a cultivar of a restricted plant species
3 that proves to be non-invasive by virtue of sterility factors or other
4 stable genetic traits unique to that cultivar;

5 c.¹ criteria for permits for propagation or distribution of an
6 invasive plant species for educational or research purposes;

7 ¹**[c.]** d.¹ general permits as may be necessary for the
8 implementation of this act;

9 ¹**[d.]** e.¹ warning labels to be required at the point of sale of
10 invasive plant species that describe appropriate cultivation practices
11 to avoid escape of the invasive plant species;

12 ¹**[e.]** f.¹ procedures for the submission of an application for a
13 permit;

14 ¹**[f.]** g.¹ a schedule of fees to pay for the costs of the permitting
15 program; and

16 ¹**[g.]** h.¹ any other rules or regulations as may be necessary for
17 the implementation of this act.
18

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

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

31 (1) the threat the species poses to native species in the State;

32 (2) the threat the species poses to any sensitive habitats or
33 endangered or threatened species in the State;

34 (3) the threat the species poses to any historical, cultural, or
35 infrastructure resources in the State; and

36 (4) the likelihood that the species will escape intended
37 cultivation areas and propagate uncontrolled in the State.

38 c. In order to designate a plant species an invasive plant
39 species pursuant to this section, the department shall make a finding
40 that the plant species threatens ecological, cultural, historical, or
41 infrastructure resources of the State, and may not designate a plant
42 species an invasive plant species solely because that plant species is
43 not native to New Jersey.
44

45 5. The department shall, in consultation with the Department of
46 Environmental Protection, the New Jersey Agricultural Experiment
47 Station at Rutgers, the State University, the Highlands Water

1 Protection and Planning Council established pursuant to P.L.2004,
2 c.120 (C.13:20-1 et seq.), the Pinelands Commission established
3 pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.), and any other
4 relevant State entity, develop education materials for distribution, in
5 a manner the department deems most effective, which identify
6 invasive plant species, cultivation practices to avoid the spread of
7 invasive plant species, and safer alternative plant species for
8 cultivation in the State, where applicable. These educational
9 materials shall be distributed at the point of sale of invasive plant
10 species, and any other locations deemed appropriate by the
11 department.

12

13 6. a. Any person who violates this act, or any rule or regulation
14 adopted pursuant thereto, shall be subject to a civil penalty of up to
15 \$100 for a first offense, up to \$200 for a second offense, and up to
16 \$500 for a third or subsequent offense. Any civil penalty imposed
17 pursuant to this subsection may be collected with costs in a
18 summary proceeding pursuant to the "Penalty Enforcement Law of
19 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court
20 shall have jurisdiction to enforce the provisions of the "Penalty
21 Enforcement Law of 1999" in connection with this act.

22 b. The department may institute a civil action in a court of
23 competent jurisdiction for injunctive relief to prohibit or prevent a
24 violation of this act, or any rule or regulation adopted pursuant
25 thereto, and the court may proceed in the action in a summary
26 manner.

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

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

34 e. The department may compromise and settle any claim for a
35 penalty under this act in such amount in the discretion of the
36 department as may appear appropriate and equitable under all of the
37 circumstances.

38 ¹f. Nothing in this act shall be construed to impose liability on
39 any news media that accepts or publishes advertising for any
40 product that may fall within the scope of this act.¹

41

42 ¹7. a. There is hereby established a New Jersey Invasive
43 Species Council. The council shall consist of 13 members to be
44 appointed as follows:

45 (1) the Commissioner of Environmental Protection or the
46 commissioner's designee, who shall serve ex-officio;

47 (2) the Secretary of Agriculture or the secretary's designee, who
48 shall serve ex-officio;

- 1 (3) the Commissioner of Transportation or the commissioner's
2 designee, who shall serve ex-officio;
- 3 (4) the Secretary and Chief Executive Officer of the Commerce
4 and Economic Growth Commission, created pursuant to section 3 of
5 P.L.1998, c.44 (C.52:27C-63), or the secretary's designee, who shall
6 serve ex-officio; and
- 7 (5) nine additional members appointed by the Governor, no later
8 than 60 days after the effective date of this section, as follows:
- 9 (a) three representatives from conservation organizations;
10 (b) one representative from the agricultural sector;
11 (c) two representatives of the nursery and landscape sector;
12 (d) one representative of the New Jersey Agricultural Invasive
13 Species Council;
- 14 (e) one representative from academia;
15 (f) one representative from the general public.
- 16 b. The co-chairpersons of the council shall be the
17 Commissioner of Environmental Protection and the Secretary of
18 Agriculture, or their designees. A majority of the membership of
19 the council shall constitute a quorum for the transaction of council
20 business, and action may be taken at any meeting by the affirmative
21 vote of a majority of the membership of the council.
- 22 c. The council shall request the participation of the United
23 States Department of Agriculture, the United States Environmental
24 Protection Agency, and the United States Department of the
25 Interior.
- 26 d. The council shall develop a comprehensive New Jersey
27 Invasive Species Management Plan to be submitted to the Governor
28 and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
29 Legislature, no later than one year after the effective date of this
30 section. The management plan shall include but not be limited to: a
31 statement of policy and mission; definitions; findings concerning
32 the current status of non-indigenous plant species in New Jersey
33 and their impact on habitat, biota, and natural ecosystems;
34 identification of prevention methods and procedures for early
35 detection and rapid response, and control measures; identification
36 of restoration and research needs and pilot projects; establishment
37 of information management, education, and interpretation measures;
38 and coordination among State agencies and adjacent states.
- 39 e. The council shall undertake the following tasks and any
40 other reasonable measures necessary to prevent the introduction of
41 invasive species and to eliminate or minimize invasive species
42 already established in the State. These tasks, as appropriate, may
43 become components of the New Jersey Invasive Species
44 Management Plan:
- 45 (1) recommend measures necessary for State departments and
46 agencies, and non-governmental organizations to cooperate with
47 federal agencies and other states in complying with federal

1 Executive Order No. 13112 and the National Invasive Species
2 Management Plan;

3 (2) identify research needs to better assess the sources, degree,
4 distribution, and threat posed by invasive species, and methods for
5 preventing the introduction and control of invasive species;

6 (3) review ongoing invasive species control efforts being carried
7 out by State departments and agencies, and recommend new or
8 revised measures to limit the introduction and effectuate the control
9 of invasive species;

10 (4) produce educational materials for public distribution
11 regarding the threats posed by invasive species, outlining measures
12 to prevent the introduction of invasive species and to control
13 invasive species, and encourage the use of local native genotypes
14 propagated in New Jersey in landscaping and planting, including
15 drought tolerant native plants;

16 (5) develop partnerships with federal, State, and local
17 government agencies and private organizations, including the
18 horticultural industry, necessary to implement the policies and
19 recommendations of the council;

20 (6) identify funding sources for research, monitoring, control,
21 and outreach programs; and

22 (7) identify legislative or regulatory actions necessary to
23 implement or further the policies and recommendations of the
24 council.¹

25

26 ¹**[7. This act]** 8. Section 7 of the bill shall take effect
27 immediately, and sections 1 through 6 of the bill¹ shall take effect
28 on the first day of the 24th month next following enactment, except
29 that the department may take any anticipatory administrative action
30 in advance as may be necessary for the implementation of this act.