

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.

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

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

1. As used in this act:

"Department" means the Department of Agriculture.

"Invasive plant species" means any living part of the following species or any cultivar, variety, or subspecies thereof, including the seeds or spores of such species: Norway maple (*Acer platanoides*); mimosa or silk tree (*Albizia julibrissin*); porcelain berry (*Ampelopsis glandulosa var. brevipedunculata*); Japanese angelica tree (*Aralia elata*); Japanese barberry (*Berberis thunbergii*); Japanese clematis (*Clematis terniflora*); autumn olive (*Elaeagnus umbellata*); weeping lovegrass (*Eragrostis curvula*); winged burning bush (*Euonymus alatus*);

English ivy (*Hedera helix*); Japanese hop (*Humulus japonicas*); sericea lespedeza (*Lespedeza cuneate*); European privet (*Ligustrum vulgare*); Amur honeysuckle (*Lonicera maackii*); Morrow's honeysuckle (*Lonicera morrowii*); purple loosestrife (*Lythrum salicaria*); Japanese crabapple (*Malus toringo*); Chinese silvergrass (*Miscanthus sinensis*); Eurasian water-milfoil (*Myriophyllum spicatum*); Oriental photinia (*Photinia villosa*); Callery or Bradford pear (*Pyrus calleryana*); common buckthorn (*Rhamnus cathartica*); jetbead (*Rhodotypos scandens*); multiflora rose (*Rosa multiflora*); European water chestnut (*Trapa natans*); Siebold's arrowwood (*Viburnum sieboldii*); Japanese wisteria (*Wisteria floribunda*); Chinese wisteria (*Wisteria sinensis*); and any other species designated by the department pursuant to section 4 of this act.

"Permit" means a permit issued by the department pursuant to section 3 of this act.

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

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

- a. criteria for permits for limited propagation for sale of an invasive plant species, in ways that prevent or minimize the risk of escape and unintentional propagation in the wild;
- b. criteria for permits for propagation or distribution of an invasive plant species for educational or research purposes;
- c. general permits as may be necessary for the implementation of the act;
- d. warning labels to be required at the point of sale of invasive plant species that describe appropriate cultivation practices to avoid escape of the invasive plant species;
- e. procedures for the submission of an application for a permit;
- f. a schedule of fees to pay for the costs of the permitting program; and
- g. any other rules or regulations as may be necessary for the implementation of the act.

4. a. The department, in consultation with the Department of Environmental Protection, the New Jersey Agricultural Experiment Station at Rutgers, the State University, the Highlands Water Protection and Planning Council established pursuant to P.L.2004, c.120 (C.13:20-1 et seq.), the Pinelands Commission established pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.), and any other relevant State entity, shall, from time to time, adopt regulations pursuant to the

"Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to designate additional plant species as "invasive plant species" for purposes of this act.

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

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

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

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

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

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

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

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

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

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

STATEMENT

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

The bill covers a group of invasive plant species in the State that are both widespread, and which pose a high risk to the ecology of the State. As defined in the bill, "invasive plant species" includes: Norway maple (*Acer platanoides*); mimosa or silk tree (*Albizia julibrissin*); porcelain berry (*Ampelopsis glandulosa var. brevipedunculata*); Japanese angelica tree (*Aralia elata*); Japanese barberry (*Berberis thunbergii*); Japanese clematis (*Clematis terniflora*); autumn olive (*Elaeagnus umbellata*); weeping lovegrass (*Eragrostis curvula*); winged burning bush (*Euonymus alatus*); English ivy (*Hedera helix*); Japanese hop (*Humulus japonicas*); sericea lespedeza (*Lespedeza cuneate*); European privet (*Ligustrum vulgare*); Amur honeysuckle (*Lonicera maackii*); Morrow's honeysuckle (*Lonicera morrowii*); purple loosestrife (*Lythrum salicaria*); Japanese crabapple (*Malus toringo*); Chinese silvergrass (*Miscanthus sinensis*); Eurasian water-milfoil (*Myriophyllum spicatum*); Oriental photinia (*Photinia villosa*); Callery or Bradford pear (*Pyrus calleryana*); common buckthorn (*Rhamnus cathartica*); jetbead (*Rhodotypos scandens*); multiflora rose (*Rosa multiflora*); European water chestnut (*Trapa natans*); Siebold's arrowwood (*Viburnum sieboldii*); Japanese wisteria

(*Wisteria floribunda*); Chinese wisteria (*Wisteria sinensis*). The bill also establishes a procedure for the Department of Agriculture to add additional plant species to the list of those covered by the bill.

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

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

A person who sells, offers for sale, distributes, or propagates an invasive plant species for sale or distribution without a permit from the department would be subject to a civil penalty of up to \$100 for a first offense, up to \$200 for a second offense, and up to \$500 for a third or subsequent offense. The department would be authorized to seize and destroy any invasive plant species that forms a basis of a violation. The department would also be required to conduct nursery inspections in a manner and form similar to inspections for nursery stock conducted pursuant to law.

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