

CHAPTER 290

AN ACT concerning invasive species and supplementing Title 23 of the Revised Statutes.

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

C.23:2A-17 Short title.

1. This act shall be known and may be cited as the "Invasive Species Management Act."

C.23:2A-18 Findings and declarations.

2. a. The Legislature finds and declares that non-native invasive species of plants, animals, and other organisms, which were intentionally or accidentally introduced into habitats and geographical areas where they did not evolve, possess the ability to reproduce and spread without the natural limits present in their native ecosystems and pose a threat to New Jersey's native species, natural resources, ecosystem function, human health, and economic vitality.

b. The Legislature therefore determines that it is in the public interest to establish a permanent New Jersey Invasive Species Council to advise the Department of Environmental Protection, the Department of Agriculture, and the Legislature on the issue of invasive species; to prohibit the sale of certain plant species that are known to be invasive; and to provide adequate annual funding to the Department of Environmental Protection and the Department of Agriculture to control the spread of invasive plant species in the State.

C.23:2A-19 Definitions.

3. As used in this act:

"Commissioner" means the Commissioner of Environmental Protection.

"Council" means the New Jersey Invasive Species Council established by section 5 of this act.

"Conditional use waiver" means an authorization issued by the Department of Environmental Protection that provides for a limited, specified use of a prohibited invasive species, which would otherwise be prohibited pursuant to the provisions of section 4 of this act.

"Cultivar" means a variety of plant that has been specifically cultivated by humans, through artificial selection, in order to produce particular traits.

"Department" means the Department of Environmental Protection.

"Departments" means both the Department of Environmental Protection and the Department of Agriculture.

"Introduction" means the placement, release, or escape of a non-native species into a new geographical area.

"Invasive species" means, with regard to a particular ecosystem, a non-native organism whose introduction causes, or is likely to cause, economic or environmental harm, or harm to human, animal, or plant health.

"Non-native species" means, with respect to a particular ecosystem, an organism, including its seeds, eggs, spores, or other biological material capable of propagating that species, that occurs outside of its natural range.

"Prohibited invasive species" means an invasive species whose introduction causes, or may cause, substantial economic or environmental harm or harm to human health, or substantially threatens, or may threaten, natural resources or the use of natural resources in the State, which species has been listed in section 4 of this act or the rules and regulations adopted by the department to implement this act.

"Secretary" means the Secretary of Agriculture.

C.23:2A-20 Prohibited invasive species.

4. a. The following species shall be considered prohibited invasive species:

- (1) Norway maple (*Acer platanoides*);
- (2) tree of heaven (*Ailanthus altissima*);
- (3) mimosa tree or Persian silk tree (*Albizia julibrissin*);
- (4) porcelain berry (*Ampelopsis glandulosa* var. *brevipedunculata*);
- (5) Japanese angelica tree (*Aralia elata*);
- (6) Japanese barberry (*Berberis thunbergii*);
- (7) Japanese clematis (*Clematis terniflora*);
- (8) autumn olive (*Elaeagnus umbellata*);
- (9) weeping lovegrass (*Eragrostis curvula*);
- (10) winged burning bush (*Euonymus alatus*);
- (11) English ivy (*Hedera helix*);
- (12) Japanese hop (*Humulus japonicus*);
- (13) European privet (*Ligustrum vulgare*);
- (14) Amur honeysuckle (*Lonicera maackii*);
- (15) Morrow's honeysuckle (*Lonicera morrowii*);
- (16) purple loosestrife (*Lythrum salicaria*);
- (17) Japanese crabapple (*Malus toringo*);
- (18) Chinese silver grass (*Miscanthus sinensis*);
- (19) Eurasian water-milfoil (*Myriophyllum spicatum*);
- (20) Oriental photinia (*Photinia villosa*);
- (21) Callery or Bradford pear (*Pyrus calleryana*);
- (22) common buckthorn (*Rhamnus cathartica*);
- (23) jetbead (*Rhodotypos scandens*);
- (24) multiflora rose (*Rosa multiflora*);
- (25) European water chestnut (*Trapa natans*);
- (26) Siebold's arrowwood (*Viburnum sieboldii*);
- (27) Japanese wisteria (*Wisteria floribunda*);
- (28) Chinese wisteria (*Wisteria sinensis*);
- (29) sericea lespedeza (*Lespedeza cuneata*);
- (30) running bamboo (*Phyllostachys*); and
- (31) any additional species formally listed, in rules and regulations adopted by the department pursuant to section 7 of this act, as a prohibited invasive species.

b. Commencing on the first day of the 13th month next following the effective date of this act, no person shall propagate a prohibited invasive species in this State, or import or otherwise introduce a prohibited invasive species into this State, without a written conditional use waiver issued pursuant to this act.

c. Commencing on the first day of the 49th month next following the effective date of this act, except as provided under P.L.1963, c.29 (C.4:8-17.13 et seq.) and the rules and regulations adopted pursuant thereto, no person shall sell, distribute, export, or offer or otherwise make available for sale, distribution, or exportation, a prohibited invasive species, or the seeds of a prohibited invasive species, in the State without a conditional use waiver issued pursuant to this act.

d. The prohibitions established in subsections b. and c. of this section shall apply to any invasive species, including any non-hybrid sub-species, variety, cultivar, or other subcategory thereof, which is formally listed, in rules and regulations adopted by the department pursuant to section 7 of this act, as a prohibited invasive species.

e. The following cultivars and varieties of prohibited invasive species shall be exempt from the prohibitions established in subsections b. and c. of this section, but when sold, offered for sale, distributed, imported, exported, or otherwise propagated for sale or distribution shall be

labelled and accompanied with the educational materials developed by the Invasive Species Council pursuant to subsection c of section 6 of this act:

(1) the following cultivars of Japanese barberry (*Berberis thunbergii*):

- (a) Aurea;
- (b) UCONNBTCP4N;
- (c) UCONNBTB113;
- (d) UCONNBTB048; and
- (e) UCONNBTB039;

(2) the following cultivars or varieties of Chinese Silver grass (*Miscanthus sinensis*):

- (a) NCMS1; and
- (b) Tift M77;

(3) any additional cultivars or varieties exempted pursuant to rules and regulations adopted by the department pursuant to section 7 of this act.

f. The exemptions provided by subsection e. of this section shall expire two years after the effective date of this act, unless the department, in consultation with the New Jersey Invasive Species Council and the Department of Agriculture, adopts rules and regulations to continue the exemptions.

C.23:2A-21 Establishing the New Jersey Invasive Species Council.

5. a. There is established in the department a New Jersey Invasive Species Council. The council shall consist of 19 members as follows:

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

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

(3) the State Treasurer or the treasurer's designee, who shall serve ex-officio;

(4) the Commissioner of Transportation or the commissioner's designee, who shall serve ex-officio;

(5) the Commissioner of Health, or the commissioner's designee, who shall serve ex-officio;

(6) the State Forester designated pursuant to section 17 of P.L.1983, c.324 (C.13:1L-17), who shall serve ex-officio; and

(7) 13 members of the public, appointed by the Governor no later than 60 days after the effective date of this act, as follows:

(a) two representatives from environmental organizations involved in protecting native plants and animals;

(b) two representatives from the food agricultural sector;

(c) two representatives from the landscape industry;

(d) two representatives from the nursery industry;

(e) two representatives of New Jersey higher education institutions with a demonstrated knowledge of plant or animal invasive species;

(f) one representative from a county park system;

(g) one representative involved in urban ecosystems; and

(h) one member of the general public with knowledge or experience of invasive species.

b. The council shall meet at such times and places as may be determined by its chairperson, who shall be designated by the Governor and who shall be jointly recommended by the Department of Environmental Protection and Department of Agriculture as having knowledge and expertise concerning invasive species issues. A majority of the council's authorized membership shall constitute a quorum for the transaction of council business, and action may

be taken, at any council meeting, by the affirmative vote of a majority of the members present who are in good standing.

c. The council may consult with any organization, educational institution, or governmental agency, including, but not limited to, the United States Department of the Interior, the United States Fish and Wildlife Service, the United States Environmental Protection Agency, the United States Department of Agriculture, the Port Authority of New York and New Jersey, the National Invasive Species Council, the New Jersey Highlands Water Protection and Planning Council, the New Jersey Pinelands Commission, the New Jersey Sports and Exposition Authority, the New York-New Jersey Trail Conference, the Delaware and Raritan Canal Commission, and the New Jersey Agricultural Experiment Station at Rutgers, the State University.

d. Each of the 13 members appointed by the Governor shall serve for a term of three years. Upon the expiration of an appointed member's term, the member may continue in their post and shall be deemed to be a member in good standing, until a successor is appointed, pursuant to this section, and is sworn into office. A public member in good standing may be reappointed to the council following the expiration of the member's term. A public member who is not in good standing may be removed from the council, for cause, on that basis.

e. Any vacancy in the membership of the council shall be filled, within six months after the date on which the vacancy occurs, in the same manner provided for the initial appointments.

f. Members of the council shall not be entitled to compensation but may be reimbursed for travel and other necessary expenses incurred thereby in the performance of their duties, within the limits of funds appropriated or otherwise made available for the council's purposes.

g. The council, upon the call of the chairperson, shall hold an organizational meeting as soon as practicable following the appointment of a majority of its authorized membership pursuant to this act and shall meet at the call of the chairperson or at least on a quarterly basis thereafter.

h. The council shall develop its own rules of order.

i. The council shall establish subcommittees as appropriate to address issues such as product review, ecosystem impacts, and the conditional use of prohibited species.

j. Before issuing a formal recommendation to the departments, the council shall provide an opportunity for members of the public to provide comments on the council's draft recommendations.

k. The Department of Environmental Protection and the Department of Agriculture shall provide staff support to the council, and the council shall also be entitled to call to its assistance and avail itself of the services of the employees of any State department, board, bureau, commission, or agency as it may require and as may be available for its purposes.

C.23:2A-22 Recommendations to the commissioner, secretary; other responsibilities.

6. a. The New Jersey Invasive Species Council shall make recommendations to the Commissioner of Environmental Protection and the Secretary of Agriculture regarding invasive species. When determining whether a species should be designated as invasive, the council shall first classify the species as native or non-native. For any non-native species, the council shall next determine whether the species should be listed as an invasive species because it causes, or may cause, economic or environmental harm or harm to human health or threatens, or may threaten, natural resources or the use of natural resources in the State. When making its determination, the council shall consider:

- (1) the likelihood of introduction of the species if it is allowed to enter or exist in the State;
- (2) the likelihood that the species would naturalize in the State if it were introduced;
- (3) the magnitude of potential adverse impacts of the species on native species and the natural resources of the State; and

(4) the ability to eradicate or control the spread of the species once it is introduced in the State.

b. Each time the council recommends that a species be designated as an invasive species, it shall provide the Commissioner of Environmental Protection and the Secretary of Agriculture with:

(1) an identification of the genus and species, including subspecies, cultivars, hybrids, or relevant genotypes;

(2) the threat level based on the current population of the species as: (a) potential; (b) emerging; or (c) established;

(3) an identification of any sterile cultivars or varieties of the species that should be considered as exceptions;

(4) a determination of whether the species should be designated as a prohibited invasive species pursuant to section 4 of this act; and

(5) for plant species recommended for prohibited designation, identify any conditions under which the council recommends that the department grant a conditional use waiver.

c. The council shall also:

(1) recommend measures necessary for State departments and agencies, and for non-governmental organizations, to cooperate with federal agencies and other states in complying with Federal Executive Order No. 13112 and the National Invasive Species Management Plan;

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

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

(4) produce or identify educational programs and materials, for public distribution, identifying the threats posed by invasive species, outlining measures to prevent the introduction of invasive species and to control invasive species in the State, and encouraging the use of local native genotypes or alternative species, including drought-tolerant native plants, preferably propagated in New Jersey, in landscaping and planting activities;

(5) develop partnerships with federal, state, and local government agencies, institutions of primary, secondary, and higher education, and non-profit and other private organizations, including horticultural organizations, as necessary to implement the policies and recommendations of the council;

(6) identify and use sources of funding that are available to support the council's research, monitoring, and control recommendations, relevant youth and community outreach programs, and other council operations and activities;

(7) identify legislative or regulatory actions necessary to implement or further the policies and recommendations of the council;

(8) make recommendations to the departments regarding the implementation of this act;

(9) review applications to the department for a conditional use waiver and make a recommendation to the department regarding authorization. Whenever the council reviews a conditional use waiver request submitted to the department, the council shall consider, at a minimum, the economic impact of the prohibition on the nursery industry, and the ecological importance of continued prohibition; and

(10) examine and revise the 2009 New Jersey Strategic Management Plan for Invasive Species, prepared pursuant to Executive Order No. 97 of 2004, and submit the revised plan to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature,

no later than two years after the first meeting of the council held pursuant to this act, and re-examine, and revise accordingly, the plan every 10 years thereafter.

C.23:2A-23 Rules and regulations.

7. a. No later than 12 months after the effective date of this act, the department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in consultation with the Department of Agriculture, rules and regulations to implement the provisions of this act. The rules and regulations shall establish: (1) a list of invasive species and a list of prohibited invasive species, with consideration to any recommendations provided by the New Jersey Invasive Species Council; and (2) a process for granting a conditional use waiver for a prohibited invasive plant species for a specific stated purpose under strict and closely controlled conditions. The department shall prioritize the review of waivers identified by the Department of Agriculture as related to the agricultural or the horticultural industry and shall seek concurrence from the Department of Agriculture when granting agricultural conditional use waivers for prohibited invasive plant species.

b. No later than 36 months after the effective date of this act, and every three years thereafter, the department shall review the latest scientific recommendations from the council and revise the list of invasive species and prohibited invasive species, as appropriate.

c. The department shall create a central clearinghouse of information on its Internet website with: (1) a list of invasive species established pursuant to this act with information about how to identify the species, best practices for control or eradication, and, where possible, alternative native species for planting; (2) links to other existing categories of species management and regulation, including, but not limited to, injurious insects, noxious weeds, potentially dangerous species, and federally regulated species; (3) links to the department's native species list. The Department of Agriculture and the Department of Environmental Protection shall establish links from their Internet websites to the council's website or otherwise incorporate the same information on each agency's website.

d. The department may impose fees on persons who apply for a conditional use waiver, pursuant to this act, in order to cover its administrative costs incurred in implementing the provisions of this act. All fees collected under this act shall be paid into the State Treasury and shall be appropriated to the department for use in implementing the provisions of this act.

C.23:2A-24 Relation to contradictory ordinances, resolutions, rules, or regulations.

8. The provisions of this act and the rules and regulations adopted pursuant thereto shall supersede any contradictory ordinances, resolutions, rules, or regulations, which are, or have been, adopted at the municipal, county, or regional levels in association with the regulation of invasive species or the permitting of activities involving the introduction, sale, import, export, distribution, propagation, or purchase of a prohibited invasive species.

C.23:2A-25 Enforcement of provisions; violations; penalties.

9. a. The Department of Agriculture and the Department of Environmental Protection shall jointly enforce the provisions of this act. For violations that involve the sale, offer for sale, propagation for sale, or importation of a prohibited invasive plant species or the seeds thereof, the Department of Agriculture shall assume primary enforcement responsibility, and the amount of any civil penalty or civil administrative penalty shall be assessed by considering each instance of the prohibited action as an additional, separate, and distinct offense. For all other violations, the Department of Environmental Protection shall assume primary enforcement responsibility, and the amount of any civil penalty or civil administrative penalty

shall be assessed by considering each day during which a violation continues as an additional, separate, and distinct offense. Whenever the Secretary of Agriculture or the Commissioner of Environmental Protection finds that a person violates any provision of this act, or any rule or regulation adopted pursuant thereto, or knowingly makes a false statement, representation, or certification in any application, record, plan, or other document filed or required to be maintained pursuant to this act, the secretary or the commissioner, as applicable, may:

(1) issue an order requiring the person found to be in violation to comply in accordance with subsection b. of this section;

(2) bring a civil action in accordance with subsection c. of this section;

(3) levy a civil administrative penalty in accordance with subsection d. of this section; or

(4) bring an action for a civil penalty in accordance with subsection e. of this section.

b. Whenever the secretary or the commissioner, as applicable, finds that a person has violated this act, or any rule or regulation adopted pursuant thereto, the secretary or the commissioner, as applicable, may issue an administrative enforcement order specifying the provision or provisions of this act, or the rule or regulation adopted pursuant thereto, of which the person is in violation, citing the action that constituted the violation, requiring compliance with the provision violated, and giving notice to the person of the person's right to a hearing on the matters contained in the administrative enforcement order. The ordered person shall have 20 calendar days from receipt of the order within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the secretary or the commissioner, as applicable, may issue a final order. If no hearing is requested, the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

c. The secretary or the commissioner, as applicable, is authorized to institute a civil action in Superior Court for appropriate relief from a violation of the provisions of this act, or any rule or regulation adopted thereof, as specified in subsection a. of this section. Such relief may include, singly or in combination:

(1) a temporary or permanent injunction;

(2) recovery of reasonable costs of any investigation or inspection which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;

(3) recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation of the provisions of this act, or any rule or regulation adopted pursuant thereto, for which a civil action has been commenced and brought under this subsection;

(4) recovery of compensatory damages caused by a violation of the provisions of this act, or any rule or regulation adopted, for which a civil action has been commenced and brought under this subsection. Assessments under this subsection shall be paid to the State Treasurer, except that compensatory damages may be paid by specific order of the court to any persons who have been aggrieved by the violation.

d. The secretary or the commissioner, as applicable, is authorized to assess a civil administrative penalty of not less than \$1,000 nor more than \$2,000 for a violation of the provisions of this act. In assessing a civil administrative penalty, the secretary or the commissioner, as applicable, shall consider the severity of the violation, the measures taken to prevent further violations, and whether the penalty will maintain an appropriate deterrent. Prior to assessment of a civil administrative penalty, the person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall identify the section of the statute, rule, regulation, or order violated; recite the facts

alleged to constitute a violation; state the basis for the amount of the civil administrative penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 20 days from receipt of the notice within which to deliver to the secretary or the commissioner, as applicable, a written request for a hearing. After the hearing and upon finding that a violation has occurred, the secretary or the commissioner, as applicable, may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative order is in addition to all other enforcement provisions in this act, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The secretary or the commissioner, as applicable, may compromise any civil administrative penalty assessed under this section in an amount and with conditions the secretary or the commissioner, as applicable, determines appropriate.

e. A person who violates any provision of this act, or any rule or regulation adopted pursuant thereto, or an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the Department of Agriculture or the Department of Environmental Protection, as applicable, shall be subject, upon order of a court, to a civil penalty not to exceed \$2,000 per day of the violation, and each day during which the violation continues shall constitute an additional, separate, and distinct 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.), or may be collected in a civil action commenced by the secretary or the commissioner, as applicable. In addition to any penalties, costs, or interest charges, the Superior Court, or the municipal court as the case may be, may assess against the violator the amount of economic benefit accruing to the violator from the violation.

f. Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

C.23:2A-26 Adoption of rules and regulations; imposition of fees.

10. a. The Department of Agriculture shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations concerning the enforcement of the prohibitions on the sale, distribution, export, import, and propagation of invasive plant species as it pertains to their regulation of plant growers and dealers, or as otherwise necessary to effectuate the provisions of this act.

b. The Department of Agriculture may impose fees to cover its enforcement and inspection costs incurred in implementing the provisions of this act. All fees collected under this act shall be paid into the State treasury and shall be appropriated to the Department of Agriculture for use in implementing the provisions of this act.

11. This act shall take effect immediately.

Approved January 20, 2026.