

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO AGRICULTURE AND FORESTRY -- ESTABLISHING THE "PROTECTION FROM INVASIVE PLANT SPECIES ACT"

Introduced By: Senator Erin Lynch Prata

Date Introduced: February 27, 2019

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 2 of the General Laws entitled "AGRICULTURE AND FORESTRY"  
2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 16.2

4 THE PROTECTION FROM INVASIVE PLANT SPECIES ACT

5 **2-16.2-1. Short title.**

6 This chapter shall be known and may be cited as "The Protection from Invasive Plant  
7 Species Act."

8 **2-16.2-2. Definitions.**

9 For purposes of this chapter, unless the context otherwise requires:

10 (1) "Director" means the director of the Rhode Island department of environmental  
11 management and the director's authorized agents.

12 (2) "Kind" means one or more related species or subspecies which, singly or collectively,  
13 is known by one common name, for example corn, oats, alfalfa, and timothy.

14 (3) "Invasive plant" means a plant or plant species nonnative to Rhode Island and which  
15 grows or spreads aggressively and displaces other plants.

16 (4) "Person" means any individual, partnership, corporation, company, society or  
17 association.

18 (5) "Prohibited noxious invasive plant" means invasive plants that reproduce by seed or

1 spread by underground roots, stems and other reproductive parts, and which, when well  
2 established, are highly destructive and difficult to control in this state by ordinary good cultural  
3 practice.

4 (6) "Running bamboo" means any bamboo in the genus Phyllostachys, including, but not  
5 limited to, Phyllostachys aureosulcata.

6 (7) "Seize" means a legal process carried out by court order against a specific plant or  
7 plants.

8 (8) "Stop sale" means an administrative order, provided by law, restraining the sale, use,  
9 disposition, and/or movement of a specific plant or plants.

10 (9) "Type" means a group of varieties so nearly similar that the individual varieties  
11 cannot be clearly differentiated except under special conditions.

12 (10) "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit,  
13 seed, or other characteristics, by which it can be differentiated from other plants of the same kind.

14 **2-16.2-3. Duties and authority of the director of the department of environmental**  
15 **management.**

16 (a) The duty of enforcing this chapter and carrying out its provisions and requirements is  
17 vested in the director of the department of environmental management. It is the duty of the  
18 director, who may act through his or her authorized agents:

19 (1) To sample, inspect, make analysis of, and test invasive plants transported, sold, or  
20 offered or exposed for sale within the state for planting purposes, at any time and place and to any  
21 extent as the director may deem necessary to determine whether those invasive plants are in  
22 compliance with the provisions of this chapter; to notify promptly the person who transported,  
23 sold, offered, or exposed the plant for sale, of any violation;

24 (2) To prescribe and, after a public hearing following public notice, to adopt rules and  
25 regulations governing the method of sampling, inspecting, analyzing, testing, and examining  
26 invasive plants and the rules to be followed in the administration of this chapter, which shall be in  
27 general accord with officially prescribed practices in interstate commerce and any other rules and  
28 regulations that may be necessary to secure efficient enforcement of this chapter;

29 (3) To prescribe and, after a public hearing following public notice, establish, add to, or  
30 subtract from by regulations a prohibited noxious invasive plant list; and

31 (4) To prescribe and, after a public hearing following public notice, to adopt rules and  
32 regulations establishing reasonable standards of planting, growing, maintaining and sale or  
33 transfer of invasive plants.

34 (b) For the purpose of carrying out the provisions of this chapter, the director,

1 individually or through the director's authorized agents, is authorized:

2 (1) To enter upon any public or private premises during regular business hours in order to  
3 have access to invasive plants and the records connected with the premises subject to this chapter  
4 and rules and regulations under this chapter, and any truck or other conveyer by land, water, or  
5 air at any time when the conveyer is accessible, for the same purpose;

6 (2) To issue and enforce a written or printed "stop sale" order to the owner or custodian  
7 of any lot of plants that the director finds is in violation of any of the provisions of this chapter or  
8 rules and regulations promulgated under this chapter. That order shall prohibit further sale,  
9 processing, and movement of the plants, except on approval of the director, until the director has  
10 evidence that the law has been complied with and the director has issued a release from the "stop  
11 sale" order of the plants; provided, that in respect to plants that has been denied sale, processing,  
12 and movement as provided in this subsection, the owner or custodian of the plants has the right to  
13 appeal from the order to a court of competent jurisdiction in the locality in which the plants are  
14 found, praying for a judgment as to the justification of the order and for the discharge of the  
15 plants from the order prohibiting the sale, processing, and movement in accordance with the  
16 findings of the court. The provisions of this subsection shall not be construed as limiting the right  
17 of the director to proceed as authorized by other sections of this chapter;

18 (3) To establish and maintain or make provisions for invasive plant-testing facilities; to  
19 employ qualified persons; and to incur any expenses that may be necessary to comply with these  
20 provisions;

21 (4) To make or provide for making tests of invasive plants for farmers and dealers on  
22 request; to prescribe rules and regulations governing that testing; and to fix and collect charges  
23 for the tests made. Fees shall be accounted for in any manner that the state legislature may  
24 prescribe; and

25 (5) To cooperate with the United States Department of Agriculture and other agencies in  
26 invasive plant law enforcement.

27 (c) Jurisdiction in all matters pertaining to the cultivation, harvesting, production,  
28 processing, certification, labeling, inspection, analyzing, testing, sampling, classification,  
29 designation, advertising, marketing, sale, storage, transportation, distribution, possession,  
30 notification of use, planting, and other use of invasive plants is, by this chapter, vested  
31 exclusively in the director, to the exclusion of all local ordinances or regulations.

32 (1) All acts or parts of acts, whether general, special, or local, inconsistent with this  
33 section are expressly repealed, declared to be invalid, and of no effect.

34 **2-16.2-4. Running bamboo restriction.**

1 (a) A person planting running bamboo shall do so in compliance with all applicable  
2 regulations promulgated by the director, and shall not plant running bamboo or allow running  
3 bamboo to be placed within one hundred feet (100') of any abutting property or public right-of-  
4 way unless wholly contained within a barrier system or container.

5 (b) Any person planting running bamboo in violation of subsection (a) of this section or  
6 who allows running bamboo to migrate to any neighboring property shall be liable for the costs of  
7 removal and for damage to the neighboring property.

8 (c) Any retail seller or installer of running bamboo shall comply with all applicable  
9 regulations promulgated by the director and shall provide the purchaser of the running bamboo  
10 with a written disclosure of the provisions of subsections (a) and (b) of this section.

11 **2-16.2-5. Order to destroy invasive plants.**

12 If the director or his or her authorized agent finds on examination any nursery,  
13 greenhouse, field or farm crop, forest, small fruit plantation, cemetery, storehouse or elevator,  
14 conveyance, or any other private or public premises, any invasive plant or invasive plants which  
15 are likely, in the opinion of the director, to endanger adjacent property or the welfare of the  
16 agricultural economy of the state, the director may declare the premises or plants, to be a public  
17 nuisance, and shall notify the owner or person having charge of the premises or plants, to that  
18 effect, in writing, and the owner or person in charge upon receipt of the written notification, shall  
19 within a period of time that shall be specified on the written notification by the director, cause the  
20 removal and sanitary destruction of all invasive plants.

21 **2-16.2-6. Seizure -- Condemnation.**

22 Any invasive plant or plants not in compliance with the provisions of this chapter and the  
23 implementing rules promulgated by the director are subject to seizure on complaint of the director  
24 to a court of competent jurisdiction in the locality in which the plants are located. In the event the  
25 court finds the plants to be in violation of this chapter and orders the condemnation of the plants,  
26 then the plants shall be destroyed, or otherwise disposed of in compliance with the laws of this  
27 state and in no instance shall the court order the disposition of the plants without first having  
28 given the claimant an opportunity to apply to the court for the release of the plants.

29 **2-16.2-7. Injunction.**

30 When in the performance of his or her duties the director applies to any court for a  
31 temporary or permanent injunction restraining any person from violating or continuing to violate  
32 any of the provisions of this chapter or any rules and regulations under this chapter, the injunction  
33 is to be issued without bond.

34 **2-16.2-8. Violations and prosecutions.**

1           (a) Every violation of the provisions of this chapter shall be deemed a civil violation  
2 punishable by a fine not exceeding one hundred dollars (\$100) for the first offense and not  
3 exceeding two hundred fifty dollars (\$250) for each subsequent similar offense.

4           (b) No prosecution under this chapter shall be instituted without the individual first  
5 having been given an opportunity to appear before the director or his or her duly authorized  
6 agent, to introduce evidence either in person or by agent or attorney at a private hearing. If, after  
7 the hearing, or without the hearing in case the individual or his or her agent or attorney fails or  
8 refuses to appear, the director is of the opinion that the evidence warrants prosecution, the  
9 director shall proceed as provided in this section.

10           (c) It is the duty of the director to institute proceedings at once against any person  
11 charged with a violation of this chapter, if, in the judgment of the director, the information  
12 submitted warrants that action.

13           (d) After judgment in any case arising under this chapter, the director shall publish any  
14 information pertinent to the issuance of the judgment in any media as the director may designate  
15 from time to time.

16           SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO AGRICULTURE AND FORESTRY -- ESTABLISHING THE "PROTECTION  
FROM INVASIVE PLANT SPECIES ACT"

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1           This act would place restrictions on the planting and growing of invasive plant species in  
2 the state of Rhode Island. Specific restrictions would be placed on "running bamboo". The  
3 director of the department of environmental management would promulgate rules to carry out  
4 provisions of this chapter. The act would also impose fines for violations.

5           This act would take effect upon passage.

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