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HOUSE BILL NO. 491

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 2, 2022)

(Patron Prior to Substitute—Delegate Bulova)

A *BILL to amend and reenact §§ 3.2-800, 3.2-802, and 3.2-804 of the Code of Virginia, relating to noxious weeds.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-800, 3.2-802, and 3.2-804 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-800. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Certificate" means a document issued or authorized by the Commissioner indicating that a regulated article is not contaminated with a noxious weed.

"Infested" means the establishment of a noxious weed or exposure to such weed, which would be reasonable cause to believe that establishment could occur.

"Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved, *except for bona fide agricultural purposes including the management, tilling, planting, or harvesting of agricultural products.*

"Noxious weed" means any living plant, or part thereof, declared by the Board through regulations under this chapter to be detrimental to crops, surface waters, including lakes, or other desirable plants, livestock, land, or other property, or to be injurious to public health, the environment, or the economy, except when in-state production of such living plant, or part thereof, is commercially ~~viable~~ *significant* or such living plant is commercially propagated in Virginia.

"Permit" means a document issued or authorized by the Commissioner to provide for movement of regulated articles to restricted destinations for limited handling, utilization, processing, or for scientific purposes.

"Person" means the term as defined in § 1-230. The term also means any society.

"Quarantine" means a legal declaration by the Board that specifies: (i) the noxious weed; (ii) the articles to be regulated; (iii) conditions governing movement; and (iv) exemptions.

"Regulated article" means any article of any character as described in this chapter or in the quarantine carrying or capable of carrying a noxious weed against which this chapter or the quarantine is directed.

§ 3.2-802. Powers and duties of Board; quarantine; labeling.

A. The Board shall establish by regulation, after a public hearing, those weeds deemed to be noxious weeds not otherwise so declared by the terms of this chapter. Prior to designating a living plant or part thereof as a noxious weed, the Board shall review the recommendations of an advisory committee established by the Commissioner to conduct a scientific risk assessment of the proposed plant. The assessment shall include the degree to which the plant is detrimental to crops; surface waters, including lakes; other desirable plants; livestock; land or other property; public health; the environment; and the economy. The advisory committee shall also include in its recommendations to the Board an analysis of the current and potential in-state commercial ~~viability~~ *significance* of the specific plant species and the economic impact on industries affected by the designation of the plant as a noxious weed. *If a plant that is currently in trade in the Commonwealth is deemed to be a noxious weed, the Board shall implement a phase-out period for the noxious weed of not less than one year and not more than six years.*

B. The Board may establish a statewide quarantine and adopt regulations pertaining to regulated articles and conditions governing movement, under which the Commissioner shall proceed to eradicate or suppress and prevent the dissemination of noxious weeds in the Commonwealth, and shall adopt other regulations as are necessary to carry out the purpose of this chapter. *The Board may adopt regulations governing the conditions under which a permit is required to move, transport, deliver, ship, offer for shipment, sell, or offer for sale into or within the Commonwealth any noxious weed or part thereof.* The Board may adopt regulations governing the movement of regulated articles entering the Commonwealth from without. Following the establishment of a quarantine, no person shall move any noxious weed or any regulated article described in the quarantine from any regulated area without a valid permit or certificate, *if required.*

Subsequent to the declaration of a quarantine by the Board, the Commissioner shall limit the application of the regulations pertinent to such quarantine to the infested portion of the Commonwealth and appropriate environs, which would be known as the regulated area and may, without further hearing, extend the regulated area to include additional portions of the Commonwealth upon publication of a

60 notice to that effect in a newspaper distributed in the extended area or by direct written notice to those
61 concerned.

62 *C. The Commissioner shall prepare a sign that shall be displayed at every nursery and retail plant*
63 *outlet in the Commonwealth that explains that invasive plants are difficult to control and cause damage*
64 *to the ecosystems of the Commonwealth. The sign shall provide information on how to electronically*
65 *access the Department's invasive plant species list. Every nursery and retail plant outlet in the*
66 *Commonwealth shall display one sign in a position visible to employees and customers. The Board may*
67 *adopt additional standards for content and placement of such signage. The Department shall provide*
68 *signs to nurseries and retail plant outlets and shall issue updated signs as necessary. The Department*
69 *shall provide replacement or additional signs at the request of a nursery or retail plant outlet.*

70 **§ 3.2-804. Prohibited acts; noxious weeds.**

71 No person shall violate any provisions of this chapter or any regulation adopted hereunder. No
72 person shall move, transport, deliver, ship, or offer for shipment into or within the Commonwealth any
73 noxious weed, or part thereof, without first obtaining a permit from the Commissioner. If the Board
74 requires a person to obtain a permit pursuant to subsection B of § 3.2-803, a person shall obtain such
75 permit prior to moving, transporting, delivering, shipping, offering for shipment, selling, or offering for
76 sale into or within the Commonwealth a noxious weed or part thereof. Such permit shall be issued only
77 after it has been determined that the noxious weed is generally present already or it is for scientific
78 purposes subject to prescribed safeguards.

79 2. That the amendment to the definition of "noxious weed" in § 3.2-800 of the Code of Virginia, as
80 amended by this act, shall become effective on July 1, 2023.

81 3. That the Board of Agriculture and Consumer Services (the Board) shall adopt regulations
82 defining of "commercially significant," "in-state production," "part thereof," and "commercially
83 propagated. Such regulations shall be in the formal approval process no later than July 1, 2023. In
84 developing such definitions, the Board shall convene a working group composed of representatives
85 of different industry sectors, at least four interested conservation groups, and other groups deemed
86 necessary to develop definitions that are practical and that balance the needs of industry groups
87 and the need to eliminate the sale of plants that are harmful to the Commonwealth's ecosystems.

88 4. That the Department of Conservation and Recreation shall update its list of invasive plants no
89 later than January 1, 2024, and shall update such list at least every four years thereafter.

90 5. That no agency of the Commonwealth shall plant, sell, or propagate any plant listed on the
91 Department of Conservation and Recreation's invasive plants list unless necessary for scientific or
92 educational purposes.

93 6. That the Invasive Species Working Group shall prepare a budget request for the 2023 Session
94 of the General Assembly to support full implementation of its existing Invasive Species
95 Management Plan.

96 7. That the Board of Agriculture and Consumer Services shall develop regulations requiring
97 landscape designers and contract planting services to inform landowners whenever a planting will
98 include a plant on the Department of Conservation and Recreation's invasive plants list.