

VIRGINIA DEPARTMENT
OF AGRICULTURE AND
CONSUMER SERVICES

Review of the Legislative and Regulatory Authority of the Board of Agriculture and Consumer Services Pertaining to the Control of Noxious Weeds

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Legislative Mandate
Chapter 66 of the 2026 Acts of Assembly

Executive Summary
Chapter 66 (HB 109) of the 2026 Acts of Assembly amended the definition of noxious weed in the Noxious Weeds Law (Va. Code 3.2-800 et seq.) to remove the exclusion for living plants or parts thereof that are commercially viable or commercially propagated in Virginia and remove the requirement that the Noxious Weeds Advisory Committee (Committee) include in its recommendations to the Board of Agriculture and Consumer Services an analysis of the current and potential in-state commercial viability of a plant species. Additionally, any plant that is designated by the Board as a noxious weed and commercially propagated in Virginia shall, upon being designated, be subject to a phase-out period of two years for grasses, forbs, and vines; four years for shrubs; and seven years for trees. Chapter 66 also directed the Commissioner of Agriculture and Consumer Services (Commissioner) to conduct a review of the legislative and regulatory authority of the Board pertaining to the control of noxious weeds and report his findings and recommendations to the Chairs of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources by November 1, 2026.

The Virginia Department of Agriculture and Consumer Services (VDACS) reviewed the role of the Noxious Weeds Advisory Committee (Committee); the membership structure, terms, and meetings of the Committee; the regulatory process and considerations for which plant species, including specific cultivars, are either added or omitted from the list published in 2 VAC 5-317-20 of the Virginia Administrative Code; and the necessary resources required by VDACS to implement the provisions of 2 VAC 5-317-20 of the Virginia Administrative Code.

As part of this review, the Commissioner established a work group to solicit feedback from stakeholders, including the horticulture industry, state agencies, and conservation groups, to ensure multiple perspectives were considered in the development of any recommendations.

The report includes recommendations regarding the structure of the Committee, the noxious weed assessment tool and submission process, a cultivar exemption process, noxious weed permitting, the regulatory process for adding a plant to the noxious weeds list, and agency resources.

Introduction

Section 3.2-802 of the Noxious Weeds Law (Law) authorizes, in relevant part, the Board of Agriculture and Consumer Services (Board) to designate plants as noxious weeds and restrict their movement in the Commonwealth. Under this authority, the Board promulgated 2 VAC 5-317, Regulations for the Enforcement of the Noxious Weeds Law (Regulation), which became effective in 2015.

Prior to July 1, 2026, plants that were considered commercially viable or were commercially propagated in Virginia were exempt from being listed as noxious weeds. Chapter 66 (HB 109) of the 2026 Acts of the General Assembly amended the definition of a noxious weed to remove this exemption, allowing the Board to designate a plant as a noxious weed even if it is commercially viable or commercially propagated in Virginia. As amended, the Law states that upon being designated as a noxious weed, any such plant commercially propagated in Virginia is subject to a phase-out period of two years for grasses, forbs, and vines; four years for shrubs; and seven years for trees. After this phase-out period, the plants can no longer be moved, transported, delivered, shipped, offered for shipment, sold, or offered for sale into or within the Commonwealth without a permit.

As these changes are likely to have impacts on the industry as well as other agencies and organizations, Chapter 66 directs the Commissioner of Agriculture and Consumer Services (Commissioner) to review the legislative and regulatory authority of the Board pertaining to the control of noxious weeds. Such review must include the role of the Noxious Weeds Advisory Committee (Committee); the membership structure, terms, and meetings of the Committee; the regulatory process and considerations for which plant species, including specific cultivars, are either added or omitted from the list published in 2 VAC 5-317-20 of the Virginia Administrative Code; and the necessary resources required by the Virginia Department of Agriculture and Consumer Services (VDACS) to implement the provisions of 2 VAC 5-317-20 of the Virginia Administrative Code. The Commissioner is required to report the findings to the Chairs of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources by November 1, 2026.

Background

"Noxious weed" is defined in the Law as "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."

A cultivar is a named group of cultivated plants that are: (i) distinguished from other members of the same species or interspecific hybrid complex by any combination of genetic traits that may be significant in relation to the purposes for which the plants are cultivated; (ii) usually derived from a single selection of one plant or a small group of similar plants; and (iii) propagated by means that maintain a high degree of genetic uniformity among its member individuals, at least with regard to horticulturally or agronomically important characteristics, and usually also with regard to characteristics affecting the appearance and recognizability of the plants (James S. Pringle, Arboriculture & Urban Forestry (AUF), February 1975, 1 (2) 30-34). Certain plants have been cultivated to reduce invasive characteristics of their species, and a number of such cultivars are sold in Virginia, offering alternatives to their more invasive parent plant species.

Noxious Weed Advisory Committee

The Law requires the Board to review the recommendations of an advisory committee established by the Commissioner to conduct a scientific risk assessment of the proposed plant prior to designating a living plant or part thereof as a noxious weed. The Commissioner established the Noxious Weed Advisory Committee (Committee) to conduct this required assessment. The Law requires the Committee to assess the degree to which a plant is considered detrimental to crops; surface waters, including lakes; other desirable plants; livestock; land or other property; public health; the environment; and the economy. The Committee must also include in its recommendations to the Board an analysis of the economic impact on industries affected by the designation of the plant as a noxious weed.

The Regulation requires the Commissioner to convene a meeting of the Committee at least once annually and allows the Commissioner to convene additional meetings at his discretion. As established in Regulation, the Commissioner must invite the following members to every meeting of the Committee:

1. A conservation representative or organization
2. An agribusiness representative or organization
3. A local government representative or organization
4. Virginia Cooperative Extension
5. Virginia Department of Conservation and Recreation
6. Virginia Department of Forestry
7. Virginia Department of Game and Inland Fisheries
8. Virginia Department of Transportation
9. A farming representative or organization
10. A forage-based agriculture representative or organization
11. A native plant conservation representative or organization
12. A nursery and landscaping representative or organization
13. Virginia Polytechnic Institute and State University
14. Virginia State University
15. A cooperative weed management area representative or organization
16. Virginia soil and water conservation districts

Designation of Plants as Noxious Weeds

Anyone in Virginia can request to add a plant to the noxious weed list by completing a Noxious Weeds Assessment Tool form (Assessment) and submitting it to the Committee. The Assessment consists of 24 questions regarding the plant's invasiveness and its environmental, ecological, and economic impacts.

The Committee reviews the Assessments and, by majority vote of members, may develop and present to the Commissioner a list of plants recommended for listing or delisting as noxious weeds. The Regulation requires the Commissioner to consider the recommendations of the Committee in preparing the list of plants that he presents to the Board for listing or delisting as noxious weeds. The Board ultimately establishes, by regulation, those weeds it deems to be noxious.

The Department of Conservation and Recreation (DCR) maintains a list of invasive plant species that contains over 100 plant species. Many of the plants on DCR's list were previously determined

to be “commercially viable” and, therefore, not eligible for listing as a noxious weed. Over the years, Assessments for some of these plants have been submitted to the Committee; however, these Assessments could not be evaluated, as they were exempt under the Law. With this restriction now removed from the Law, VDACS anticipates that stakeholders will request that the Committee consider, and the Board include on the noxious weeds list, plants that were not previously eligible for inclusion. More than a dozen plants on DCR’s invasive plant species list are currently sold in nurseries in Virginia.

Plants Currently Designated as Noxious Weeds

The Board has determined 26 plant species to be noxious weeds; three Tier 1 noxious weeds, seven Tier 2 noxious weeds, and 16 Tier 3 noxious weeds.

A "Tier 1 noxious weed" means any noxious weed that is not known to be present in the Commonwealth. Tier 1 noxious weeds are as follows: *Salvinia molesta*, Giant salvinia; *Solanum viarum*, Tropical soda apple; *Heracleum mantegazzianum*, Giant hogweed.

A "Tier 2 noxious weed" means any noxious weed that is present in the Commonwealth and for which successful eradication or suppression is feasible. Tier 2 noxious weeds are as follows: *Imperata cylindrica*, Cogon grass; *Lythrum salicaria*, Purple loosestrife; *Ipomoea aquatica*, Water spinach; *Vitex rotundifolia*, Beach vitex; *Oplismenus hirtellus spp. undulatifolius*, Wavyleaf basketgrass; *Corydalis incisa*, Incised fumewort; *Trapa bispinosa*, Two-horned trapa.

A "Tier 3 noxious weed" means any noxious weed: (i) that is present in the Commonwealth; (ii) whose spread may be slowed by restrictions on its movement; and (iii) for which successful eradication or suppression is not feasible. Tier 3 noxious weeds are as follows: *Ailanthus altissima*, Tree of heaven; *Ampelopsis brevipedunculata*, Porcelain berry; *Celastrus orbiculatus*, Oriental bittersweet; *Hydrilla verticillata*, Hydrilla; *Persicaria perfoliata*, Mile-a-minute weed; *Alliaria petiolata*, Garlic mustard; *Dioscorea polystachya*, Chinese yam; *Elaeagnus umbellata*, Autumn olive; *Ficaria verna*, Lesser celandine; *Lespedeza bicolor*, Bicolor lespedeza; *Lonicera maackii*, Amur honeysuckle; *Lonicera japonica*, Japanese honeysuckle; *Phragmites australis*, Common reed; *Pueraria montana*, Kudzu; *Reynoutria japonica*, Japanese knotweed; *Ulmus pumila*, Siberian elm.

Noxious Weed Stakeholder Work Group

In reviewing the legislative and regulatory authority of the Board pertaining to the control of noxious weeds, as directed by Chapter 66, the Commissioner established the Noxious Weed Stakeholder Work Group. The purpose of the work group was to solicit feedback from stakeholders, particularly those also on the Committee, on the role of the Committee; the membership structure, terms, and meetings of the Committee; the regulatory process and considerations for which plant species, including specific cultivars, are either added or omitted from the list published in the Regulation; and the necessary resources required by VDACS to implement the provisions of Section 20 of the Regulation. The Commissioner felt that, even though not mandated to do so, providing an opportunity for comment to those most affected by any potential changes to the current process was beneficial to any comprehensive review.

The work group consisted of members representing various state agencies, conservation organizations, agricultural organizations, the horticulture industry, and research institutions. The

work group meeting was held virtually on September 10, 2026, and was facilitated by the Institute for Engagement & Negotiation, Weldon Cooper Center for Public Service at the University of Virginia. The meeting included the following attendees:

Charles Green, Virginia Department of Agriculture and Consumer Services (VDACS)
Kendra Shifflett, VDACS
Joel Maddux, VDACS
David Gianino, VDACS
Kevin Heffernan, Virginia Department of Conservation and Recreation
Lori A. Chamberlin, Virginia Department of Forestry
Katlin DeWitt, Virginia Department of Forestry
Curtis Childress, Virginia State University
Bill Lewis, Virginia Department of Transportation
Martin Krebs, Virginia Department of Transportation
Scott Cameron, Soil and Water Conservation Districts
Jacob Barney, Virginia Tech
Stacy Endriss, Virginia Tech, Cooperative Extension
Laura Greenleaf, James River Park System, Invasive Species Task Force
Nicole McAllister, Virginia Nursery & Landscape Association
Rod Walker, Blue Ridge PRISM
Lauren Taylor, Blue Ridge PRISM
Taylor Hubbard, Virginia Agribusiness Council
Mark Campbell, Virginia Farm Bureau Federation
Julie Whitlock, Virginia Association of Counties
Jon Repair, Virginia Forage and Grassland Council

Representatives from the Department of Wildlife Resources and Virginia Native Plant Society were also invited but were unable to attend.

Structure of the Noxious Weeds Advisory Committee

Several work group members made positive comments about the current structure of the Committee and the way the Committee meets and discusses items. One work group member noted that the Committee meets infrequently and that a more frequent meeting schedule could be set. Several members responded that meetings do not need to be set but can be called at the discretion of the Commissioner. One work group member commented that more nursery industry representation is needed on the Committee, and the work group discussed how to ensure fairness, equity, and balanced perspectives in the makeup of the Committee. There was general consensus that term limits for Committee members were not needed or appropriate.

Noxious Weed Tier Descriptions

Multiple work group members agreed that the current descriptions of the noxious weed tiers are logical and well defined. There were questions for VDACS staff regarding the purpose of the tiers and resources allocated based on the tier level, as well as prioritization based on area. One member asked how a plant would move from one tier to the other and whether that should be addressed. VDACS staff responded that it is possible to periodically reassess plants on the noxious weeds list to ensure plants remain at the most appropriate tier level. Work group members commented on the importance of the commercial significance of the tiers and ensuring that commercial significance remains part of the consideration when determining tier descriptions, as some plants are widely

disseminated in Virginia.

The work group also discussed native weeds being exempt from noxious weed designation. VDACS staff commented that, currently, native plants are not exempt from being designated as noxious weeds under the Law. The Assessment, however, includes a screening question that states that the Assessment is not applicable to native species. Some members wished to include natives in the Assessment and to possibly list certain natives as noxious weeds. One work group member suggested that there should be an agreed-upon definition of a problematic native plant.

Cultivars

The work group discussed whether noxious weed designations should exempt cultivars that have been cultivated to reduce invasive characteristics of their species. A member stated that they consider cultivars as a part of the species unless proven otherwise. Industry representatives commented that other states have processes to exempt cultivars from a noxious weed list, so long as the plants are considered sterile. A work group member mentioned Maryland's cultivar exemption, which is assessed for each cultivar based on the percentage of sterility of the plant. Maryland's process does not take into account the economic impact. The work group emphasized that the process should be transparent, fair, and specific to Virginia and agreed that additional research was needed to determine the applicability of other states' cultivar exemption processes to Virginia.

Some members responded that the focus should not necessarily be on sterility, but on risk. Conservation groups commented that most of the cultivars are not sterile and mentioned that even a plant with a two percent fertility rate could result in a great number of plants after several years of propagation. They further commented that cultivars should not be allowed unless it is proven that the plants are completely sterile. Conservation groups stated that sterility may not be known on the offspring of the cultivar.

Industry representatives responded that additional data is needed to fully understand the sterility and risk of cultivars and that it is important for the Committee to talk to industry about which new cultivars are being developed. Agriculture representatives asked whether the Committee could request Virginia universities to conduct research on cultivars. Virginia Tech stated it was fully capable of performing such research but would need resources to do so. Virginia Cooperative Extension (Extension) commented that it is working on making current research on sterility accessible and stressed the importance of bringing others to the conversation and ensuring the research is interpretable. A work group member suggested that another avenue to request research and funding would be through the Invasive Species Working Group.

Industry commented that it was important to ensure informed decisions on this process, as the laws and regulations from another state may not provide the best model for Virginia. Industry representatives also stated that it is important to understand producers and their issues specific to noxious weeds.

Permitting

Concerns were raised about the operational burden of permitting on VDACS resources. A statement was made that most citizens may not know what plants they have and whether they are noxious and there may need to be more guidance on what is allowed. A question was asked about who bears the liability for obtaining a permit, (e.g., the homeowner, the landscaper, etc.). The work

group discussed whether homeowners who remove or dispose of Tier 3 noxious weeds on their property would be subject to permitting requirements. A suggestion was made that Tier 3 noxious weeds may not require permitting, in the future, and that VDACS could instead provide education on how to remove or move these plants, and multiple members concurred. There may be opportunities to use Extension resources to educate the public and prioritize Extension materials. It was suggested that additional outreach materials for Tier 3 noxious weeds would be helpful.

Regulatory Process

The work group discussed whether the Committee should add the plants included on DCR's invasive species list to the noxious weeds list, using the information collected by DCR to conduct evaluations. DCR described its process for developing its invasive plant species list and the science behind it. Multiple work group members emphasized that the two lists should remain separate as they have different goals, with one intended for informational purposes and the other being regulatory. DCR commented that it is looking at incorporating species that are not in Virginia but are at risk of being introduced onto the invasive species list.

Conservation groups asked a question about an expedited process for plants that are already listed as noxious weeds in neighboring states. DCR stated that invasive plant designations in neighboring states inform their process of adding plants to the invasive species list. Industry groups pointed out that other states currently have a process to exempt cultivars, and Virginia is unique in the plants it may list as noxious. It was emphasized that the noxious weed list should rely on science and go through the full regulatory process and that it is important for the Committee to consider the economic impact to industry. Work group members suggested that the Board could run concurrent regulatory processes to speed up the time it takes to add new noxious weeds to the list.

Members believe the current process works well to ensure public comments. It was suggested that a website tracker for where plants are in the review process would be helpful to the public. A point was brought up about additional education on lookalike species.

Miscellaneous

Conservation groups inquired about the true economic impact of taking plants out of the trade and asked whether the economic impact criteria should be reevaluated. Industry responded that economic impact to the industry must be considered, as they are the third largest industry in the state and the impact of adding a plant to the noxious weeds list is significant.

Several written comments were received after the meeting was concluded. An industry representative commented that there is short-term economic impact on industry when a plant is designated as a noxious weed, that the math on sterile cultivars needs to be statistically driven, that the Committee should review research from other states regarding cultivars, and that there should be a sterile cultivar exemption process in Virginia.

The Virginia Nursery and Landscape Association (VNLA) provided a letter that outlined the economic significance of the nursery and landscape industry, the economic consequence that adding plants in the commercial trade to the noxious weeds list will have on industry, the importance of considering the economic impact the addition of a plant will have, and the cost of the cumulative regulatory burden on industry. VNLA further stated that cultivars should be evaluated for exemptions based on scientific evidence and that the Commonwealth can learn from other states that have taken similar paths. VNLA pointed out the challenges with permitting any

new additions to the list and indicated support for the current rulemaking process for amending the noxious weeds list.

Blue Ride Prism provided a letter stating that the phase-out period established in the Law addresses the potential economic impact on industry of a plant being added to the noxious weed list. Blue Ridge Prism acknowledged that there is also an economic and ecological impact associated with invasive plants being sold and that there is a need for additional evidence of the economic impact on industry. The organization also stated that scientific evaluation is needed on cultivars, but that very few plant cultivars are truly sterile and that further discussion is needed on permitting.

Recommendations

Structure of Noxious Weeds Advisory Committee:
The Board may wish to amend the Regulation to add an additional member to the Committee from the nursery industry to provide a more balanced makeup. Currently, the Committee is comprised of 16 organizations and agencies. Four members represent conservation organizations, four members represent industry stakeholders, five members represent state agencies or local government, and three members represent scientific partners or research institutions. Of the four industry stakeholders, two are general agricultural and farming groups and one is from the Virginia Forage and Grassland Council. Only one member of the current committee specifically represents the nursery industry.

Term limits should not be established for Committee members. There is a need for certain expertise on the Committee, and term limits may preclude needed experts from serving.

The Committee should continue meeting as established in the Regulation. The Regulation requires the Commissioner to convene the Committee at least once annually. The Commissioner may call additional meetings to ensure that the Committee has adequate time to review submitted noxious weed assessments, make recommendations to the Board, and discuss other topics related to the Committee's responsibilities.

Cultivar Exemption Process:
The General Assembly may wish to consider providing the Board with authority to exempt cultivars and authorization for the Board to prescribe a process by which these cultivars are evaluated for exemption. An exemption process would significantly minimize the economic impact on the nursery industry when certain plants are added to the noxious weeds list. The Board does not currently have the authority to exempt cultivars that may have sterility or low reproductive potential, and there is no process to evaluate sterile cultivars.

Additionally, the General Assembly may wish to commission a science-based study to develop a cultivar review, evaluation, approval, and exemption process that is Virginia-specific and could be implemented by VDACS. The study should evaluate the specific process and the most appropriate consideration for requesting and approving a cultivar exemption (e.g., weighted risk vs. percentage sterility).

Permitting:
The Board may wish to amend the Regulation to establish clearer guidelines for landowners

following the change in the Law effective July 1, 2026. The Law provides the Board with authority to develop 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. There is concern that under the current Regulation, landowners could run afoul of the Law simply by cutting a noxious weed that is present on their property and then removing the noxious weed from their property for disposal. To mitigate this concern, the Board could consider exempting Tier 3 noxious weeds from permitting requirements when such weeds are being controlled and removed from private property and, instead, require individuals who control and remove Tier 3 plants from private property to follow Best Management Practices developed by VDACS.VDACS could work with other governmental and non-governmental agencies to educate the public on movement of these plants.

Regulatory Process:
The Board should maintain its existing regulatory procedures and continue using the standard regulatory process when plants are recommended to be added to the noxious weeds list. The current regulatory process for adding additional plants to the noxious weeds list allows for a full in-depth analysis of the plant and robust comment periods for the public and industry to weigh in. VDACS could post a publicly available tracking sheet or report, identifying the plants approved to become noxious weeds and their current status in the regulatory process.

Resources:
Chapter 66 directs the Commissioner to review the necessary resources required by VDACS to implement the provisions of 2 VAC 5-317-20 of the Virginia Administrative Code.

After discussion with the work group and an opportunity to carefully evaluate the additional workload demands resulting from the legislative changes enacted on July 1, 2026, VDACS anticipates the need for two full-time positions (one botanist and one noxious weed specialist) to adequately address the service expectations under the noxious weed program. VDACS anticipates receiving significantly more requests for Assessments for review of potential noxious weeds and likely an increase in the number of permits needed for removal of Tier 3 noxious weeds that are widely distributed in the Commonwealth. Meetings for the Committee will certainly become more frequent and will require additional staffing.

VDACS does not currently have the necessary staffing resources to manage the anticipated workload of increased meeting frequency, increased Assessment review, additional noxious weed control work, and technical aspects of reviewing and navigating through a science-based cultivar exemption process.

Agency Next Steps
VDACS will modify the Assessment on the agency's website by January 1, 2027, to allow plants in the commercial trade in Virginia and native plants to be considered by the Committee. Currently, the Assessment does not allow a requester to submit the form if the plant is commercially viable in Virginia or if the plant is native to Virginia. VDACS will also reach out to DCR to request that it make concurrent updates to the Assessment form on the DCR website.

Conclusion

It is important that Virginia balance the significance of the nursery and landscape industry and its large positive economic impact in the Commonwealth with the responsibility of all sectors to combat the spread of invasive species. VDACS will continue to listen to stakeholders and provide avenues where affected constituents can provide necessary feedback about invasive plants. VDACS recognizes that the issue is complicated, especially with regard to cultivars. VDACS has provided several recommendations for the General Assembly and Board to consider when making future changes to the Law and Regulation. VDACS will update internal processes and pursue additional resources to assist with future noxious weed list additions. The agency looks forward to working with members of the General Assembly, industry representatives, conservation groups, and governmental agencies to provide a fair, balanced, and science-based process going forward.