



Ohio Legislative Service Commission

Bill Analysis

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H.B. 396

131st General Assembly
(As Introduced)

Reps. Hall, Dovilla, Thompson, M. O'Brien, Patterson, Strahorn, Sprague, Young, Slaby, K. Smith, Arndt, Blessing

BILL SUMMARY

Prohibitions regarding restricted and prohibited species

- Prohibits a person from doing any of the following:
 - Possessing a restricted species or prohibited species;
 - Introducing a restricted species or prohibited species;
 - Selling or offering to sell a restricted species or prohibited species.
- Establishes a list of restricted and prohibited species for purposes of the bill.
- Authorizes the Chief of the Division of Wildlife to designate, by rule, additional species as restricted or prohibited species (other than plant species) if certain criteria apply.
- Requires the Chief to conduct a risk assessment before designating an additional aquatic species as a restricted or prohibited species and requires the Chief to establish the risk assessment procedure by rule.
- Requires the Chief to consult with the Director of Agriculture when designating additional species.
- Authorizes the Chief to issue an emergency order designating a nonnative species (other than plant species) as a restricted or prohibited species if the species has the potential to harm human health or severely harm natural, agricultural, or silvicultural resources.

- Specifies that an emergency order is effective for not longer than 90 days.
- Requires the Chief to post an emergency order on the Division's website, publicize the order, and provide a copy of it to the appropriate committees of the Senate and House of Representatives.
- Establishes civil penalties and criminal fines for violations of the bill's provisions and requires those penalties and fines to be deposited in the existing Wildlife Fund for use by the Division of Wildlife.

CONTENT AND OPERATION

Prohibitions regarding restricted and prohibited species

The bill prohibits a person from doing any of the following:

- (1) Possessing a restricted species or prohibited species;
- (2) Introducing a restricted species or prohibited species; or
- (3) Selling or offering to sell a restricted species or prohibited species.¹

For purposes of the bill, "introduce" means to stock, place, plant, release, or allow the release of an organism in Ohio at a specific location where the organism is not already naturalized.² "Naturalize" means any process by which a nonnative species is spread into the wild and its reproduction is sufficient to sustain its own population.³ "Nonnative" means not indigenous to Ohio.⁴

Restricted species

Under the bill, a "restricted species" means a quagga mussel (*Dreissena rostriformis bugensis*) or a Zebra mussel (*Dreissena polymorpha*), including a hybrid or genetically engineered variant of the species or an egg of the species.

"Genetically engineered" means an organism whose genome, either chromosomal or extrachromosomal, is modified permanently and heritably using

¹ R.C. 1532.03.

² R.C. 1532.01(E).

³ R.C. 1532.01(G).

⁴ R.C. 1532.01(H).



recombinant nucleic acid techniques or the progeny of such an organism.⁵ "Recombinant nucleic acid techniques" means laboratory techniques through which genetic material is isolated and manipulated in vitro and then inserted into an organism.⁶

Prohibited species

The bill establishes the following list of prohibited species, which includes an egg of each species, as applicable, and a hybrid or genetically engineered variant of each species or egg:

(1) A Eurasian collard dove (*Streptopelia decaocto*);

(2) A rusty crayfish (*Orconectes rusticus*);

(3) The following fish species: bighead carp (*Hypophthalmichthys nobilis*), bitterling (Bitterling (*Rhodeus sericeus*)), black carp (*Mylopharyngodon piceus*), eurasian ruffe (*Gymnocephalus cernuus*), grass carp (*Ctenopharyngodon idella*), ide (*Leuciscus idus*); japanese weatherfish (*Misgurnus anguillicaudatus*), round goby (*Neogobius melanostomus*), rudd (*Scardinius erythrophthalmus*), silver carp (*Hypophthalmichthys molitrix*), a fish of the snakehead family (family Channidae), tench (*Tinca tinca*), and tubenose goby (*Proterorhinus marmoratus*);

(4) Both of the following insects: asian longhorned beetle (*Anoplophora glabripennis*) and emerald ash borer (*Agrilus planipennis*);

(5) A nutria (*Myocastor coypus*); and

(6) Any of the following mollusk species: brown garden snail (*Helix aspersa*), cartusian snail (*Monacha cartusiana*), giant African snail (*Achatina fulica*), girdled snail (*Hygromia cinctella*), eastern heath snail (*Xerolenta obvia*), and wrinkled dune snail (*Candidula intersecta*).⁷

Designating additional species

The bill authorizes the Chief of the Division of Wildlife to designate additional restricted or prohibited species, other than plant species, if the following criteria apply:

⁵ R.C. 1532.01(D).

⁶ R.C. 1532.01(J).

⁷ R.C. 1532.01(H).

(1) The species is nonnative.

(2) The species is not naturalized in Ohio or, if naturalized, is not widely distributed throughout Ohio.

(3) The species has the potential to harm human health or to severely harm natural, agricultural, or silvicultural resources.

(4) Effective management or control techniques for the species are not available.⁸

The Chief may designate additional species only by rule adopted in accordance with the Administrative Procedure Act. The Chief must consult with the Director of Agriculture when designating an additional species. The Chief also may adopt any other rules necessary to administer and enforce the bill.⁹

Before adopting rules to designate an additional aquatic species (see "**Aquatic Species**," below), the Chief must conduct a risk assessment. As such, the Chief is required to adopt rules in accordance with the Administrative Procedure Act establishing a risk assessment procedure for evaluating potential restricted and prohibited species.¹⁰

Emergency orders

The bill authorizes the Chief to issue an emergency order designating a nonnative species, other than a plant species, as a restricted species or prohibited species if the species has the potential to harm human health or severely harm natural, agricultural, or silvicultural resources. An emergency order issued by the Chief is effective for not longer than 90 days. In addition, the Chief must do both of the following:

(1) Post the emergency order on the Division of Wildlife's website and publicize the order, including the reason for the order and the effective date of the order;

⁸ R.C. 1532.02(A) and (C).

⁹ R.C. 1532.02(A) and 1532.04.

¹⁰ R.C. 1532.02(B) and 1532.04.

(2) Provide a copy of the emergency order to the committees of the Senate and the House of Representatives that are primarily responsible for considering environment, natural resources, and tourism-related matters.¹¹

Civil penalties

Under the bill, the Attorney General, upon written request by the Director of Natural Resources, must commence a civil action against any person who violates the bill's prohibitions.¹² In addition, the bill requires a person who has violated the above prohibitions to pay a civil penalty. The civil penalty structure is as follows:

If a person...			
possesses or introduces		sells or offers to sell	
↙ ↘		↙ ↘	
a restricted species ↓	a prohibited species ↓	a restricted species ↓	a prohibited species ↓
the person is subject to a civil penalty of up to \$5,000. ¹³	the person is subject to a civil penalty of up to \$10,000. ¹⁴	the person is subject to a civil penalty of \$1,000 to \$10,000. ¹⁵	the person is subject to a civil penalty of \$2,000 to \$20,000. ¹⁶

Criminal penalties

The bill also establishes criminal penalties for a person who has knowingly or purposefully violated the bill's prohibitions. The criminal penalty structure is as follows for a person who knowingly violates the bill's prohibitions:

¹¹ R.C. 1532.02(D).

¹² R.C. 1532.05(C).

¹³ R.C. 1532.05(A)(1).

¹⁴ R.C. 1532.05(B)(1).

¹⁵ R.C. 1532.05(A)(2).

¹⁶ R.C. 1532.05(B)(2).



If a person <i>knowingly</i> ...		
possesses, introduces, or sells or intends to sell a ↓	possesses, introduces, or sells or intends to sell a ↙ ↘	
restricted species ↓	prohibited species that is not an aquatic species ↓	prohibited species that is an aquatic species ↓
the person is guilty of a misdemeanor ↓	the person is guilty of a felony ↓	the person is guilty of a felony ↓
and must be fined \$1,000 to \$10,000 ↓	and must be fined \$2,000 to \$20,000 ↓	and must be fined \$2,000 to \$100,000 ↓
and may be imprisoned for not more than 1 year. ¹⁷	and may be imprisoned for not more than 2 years. ¹⁸	and may be imprisoned for not more than 3 years. ¹⁹

The criminal penalty structure is as follows for a person who purposefully violates the bill's prohibitions:

¹⁷ R.C. 1532.99(A)(1).

¹⁸ R.C. 1532.99(B)(1).

¹⁹ R.C. 1532.99(B)(2).

If a person *purposefully*...

and with the intent to damage natural, agricultural, or silvicultural resources or human health,				but without the intent to damage natural, agricultural, or silvicultural resources or human health,	
↓		↓		↓	
possesses a		introduces or sells or offers to sell a		introduces or sells or offers to sell a	
↓		↓		↓	
restricted species	prohibited species	restricted species	prohibited species	restricted species	prohibited species
↓	↓	↓	↓	↓	↓
the person is guilty of a felony	the person is guilty of a felony	the person is guilty of a felony	the person is guilty of a felony	the person is guilty of a felony	the person is guilty of a felony
↓	↓	↓	↓	↓	↓
and must be fined \$1,000 to \$250,000	and must be fined \$2,000 to \$500,000	and must be fined \$1,000 to \$500,000	and must be fined \$2,000 to \$1,000,000	and must be fined \$1,000 to \$250,000	and must be fined \$2,000 to \$500,000
↓	↓	↓	↓	↓	↓
and may be imprisoned for not more than 2 years. ²⁰	and may be imprisoned for not more than 4 years. ²¹	and may be imprisoned for not more than 3 years. ²²	and may be imprisoned for not more than 5 years. ²³	and may be imprisoned for not more than 2 years. ²⁴	and may be imprisoned for not more than 4 years. ²⁵

²⁰ R.C. 1532.99(A)(2).



Proceeds from civil penalties and fines

Unless otherwise directed by the Director of Natural Resources, all civil penalties and criminal fines collected under the bill's provisions must be deposited into the existing Wildlife Fund for the use of the Division of Wildlife.²⁶

Aquatic species

Under the bill, "aquatic" means an amphibian, crustacean, fish, mollusk, reptile, or wiggler.²⁷ Those terms are also defined in the bill as follows:

Term	Definition
Amphibian	Frog, toad, or salamander of the class Amphibia. ²⁸
Crustacean	Any freshwater crayfish, shrimp, or prawn of the order Decapoda. ²⁹
Mollusk	An invertebrate of the class Bivalvia or Gastropoda. ³⁰
Reptile	Any turtle, snake, or lizard of the class Reptilia. ³¹
Wiggler	An egg, nymph, or larva of an insect. ³²

²¹ R.C. 1532.99(B)(3).

²² R.C. 1532.99(A)(4).

²³ R.C. 1532.99(B)(5).

²⁴ R.C. 1532.99(A)(3).

²⁵ R.C. 1532.99(B)(4).

²⁶ R.C. 1531.17.

²⁷ R.C. 1503.01(B).

²⁸ R.C. 1503.01(A).

²⁹ R.C. 1503.01(C).

³⁰ R.C. 1503.01(F).

³¹ R.C. 1503.01(K).

³² R.C. 1503.01(M).



HISTORY

ACTION

DATE

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