

*Fallopia japonica* 'Compacta' (Dwarf Japanese Knotweed) is a cultivar used to landscape demanding dry, sunny sites with poor soil, high salinity, or high air pollution.



*Iris pseudacorus* 'Variegatus' (Variegated Yellow Flag Iris).



*Iris pseudacorus* 'Flore Pleno' (Double Flowered Yellow Flag Iris) is a sterile non-invasive hybrid prohibited by current law.

# A COSTLY PRECEDENT: HOW MUCH WILL INVASIVE LEGISLATION COST YOUR BUSINESS?

Although these plants are on the list of restricted and prohibited plants according to current law in Michigan, there is a lack of scientific evidence and accurate assessment of their invasiveness in the landscape.

By Sarah Rasch, Hortech, Inc.

Next May, imagine that you're out installing a landscape, planting a bed of your favorite cultivar of yellow flag iris in a garden that you designed. To your surprise, a Department of Agriculture inspector on his way to inspect a nursery down the road pulls over and walks over to you. He proceeds to inform you that under Public Act 451 of 1994, *Iris pseudacorus* and all of its cultivars are prohibited aquatic plant species. Since a landscape professional like you certainly knows the identity of the prohibited species you're introducing, you are guilty of a felony. You will be fined at least \$2,000 (fortunately for you, no more than \$20,000) and may be imprisoned for no more than two years. You protest that you just bought it from the nursery down the road — they shouldn't be selling it to you if it's illegal! "You're absolutely right," the inspector replies, so he'll be issuing the nursery a \$2,000 to \$20,000 fine as well.

If you think that this sounds like an alarmist scenario that I made up to get your attention, think again. On July 19, 2005, the Michigan legislature passed Public Acts 74–80 to amend and add to Public Act 451 of 1994. Prohibited aquatic plant species now listed in this law include yellow flag iris (*Iris pseudacorus*), Japanese knotweed (*Fallopia japonica*), and any hybrids or cultivars of these species. How many nurseries currently have inventory of *Iris pseudacorus* 'Flore Pleno,' or another prohibited cultivar such as *Fallopia japonica* 'Compacta'? How many landscapers are planning on installing them next year? This law that passed largely unnoticed may have a disastrous impact on the green industry.

The most disturbing fact of all is the apathy of most members of our industry, whose very livelihood is affected by this legislation. Very few dedicated individuals/members in the MNLA wrote letters

and called congressmen when the bills were on the house floor. Other than that, there was a deafening silence from the owners and employees of over 8,000 licensed green industry firms in Michigan. I wish that I had raised my voice earlier and more publicly, and contacted my state representative months ago. How could I have allowed such useful and non-threatening plants to be outlawed in the first place? The current law sets an ominous precedent for future legislation that the green industry must recognize and correct immediately.

The most obvious shortcoming of Public Act 77 of 2005 is the lack of any scientific or educated method of selecting the plants listed in the bill. Many people, including the legislators writing these bills, are not aware of the complexity of the question of invasiveness. It is seldom one with a simple answer, and usually requires consideration of information from a variety of horticultural,



*Fallopia japonica* 'Variegata' (Variegated Japanese Knotweed) is a commercially important cultivar that has been prohibited because its species is prohibited by current law in Michigan.

agricultural, and environmental sources. While Public Act 74 recommends consulting with representatives of businesses affected, the writers of the bills did not seem to hold themselves to the same standard when writing Senate Bill 211, which passed as Public Act 77. I have no idea what information or sources the sponsors of this bill used to decide what characteristics define a plant as aquatic, much less invasive. The list of plants bears a suspicious similarity to those listed on a recent bill passed in Minnesota. When pressed, legislators have revealed that they don't know where the list came from, or that their neighbor showed them one of the plants growing wild in their yard. There is certainly a lack of scientific documentation to support the plants on the list, and the legislators who wrote and passed this bill were either ignorant of this or chose to overlook it.

Our legislators need to be taught where to find expert and accurate information about plant characteristics and care and need to be educated about plant nomenclature and breeding. The best way to correct this situation is to contact your government representatives to introduce yourself as an informed resource and concerned taxpayer. You may not have all of the answers, but you can refer your

representative to industry organizations or other nurseries with extensive information and experience with a given species or issue related to invasive plants. The MNLA is an excellent source of information about our industry and it has literally thousands of contacts in government, education, and commercial industry. MNLA employees are willing and able to share helpful information or refer you or your legislator to someone else who can.

The Michigan Invasive Plant Council (MIPC) is another underused resource for information about invasive plants. It was established in 1999 by President Clinton's Executive Order 13112, requiring states to organize a council to direct the management of invasive plant and animal species and educate the public regarding invasive species. MIPC is the only government sanctioned, authoritative source for accurate information about invasive plants in Michigan. It is also the only organization that thoroughly considers input from all groups affected by invasive plants — in fact, MIPC bylaws recommend representation by seven different groups on its Board of Directors, including the MNLA, the ornamental plant industry, conservation organizations, Michigan Department of Agriculture (MDA), educational institutions, and federal and state agencies.

The MIPC Assessment Committee has developed a comprehensive Invasiveness Assessment System to fairly and accurately assess plants' invasive characteristics and to make recommendations based on documented evidence. This protocol is a scientifically credible method to determine the invasiveness risk of plants in Michigan. It considers all plant characteristics, including biology, impact on natural areas, distribution, control methods, and value. The assessment system is available online at the MIPC website, <<http://forestry.msu.edu/mipc/tool.htm>>. Reading this document is an excellent way to educate yourself on the factors that affect a plant's invasive potential and it is an accurate method of assessing invasiveness. Using it to assess plants and guide our legislation would also prevent misinformation, misinterpretation of anecdotal evidence, and personal preferences from inaccurately labeling and restricting non-invasive plants.

It is quite apparent that whatever information was used to select the plants on the current prohibited and restricted aquatic invasive plant lists was incorrect. Purple Loosestrife, which has been a prohibited noxious weed in Michigan for decades, is only listed as a restricted aquatic invasive plant in Passed Act 77. Yellow flag iris, listed as a prohibited



*Hemerocallis* 'Stella de Oro' (Stella de Oro Daylily). Will *Hemerocallis* appear next on the list?

aquatic invasive plant with double the fine for sale or possession, actually has very little risk of invasiveness. It spreads primarily by short rhizomes to a maximum width of about three feet. I have never observed *Iris pseudacorus* dominating or substantially altering an ecosystem, nor have I seen any of its cultivars establish anywhere other than where planted as part of a landscape. Its biology is no different from *Iris ensata* or *Iris siberica*, which are (accurately) not included on the list.

A non-threatening plant like *Iris pseudacorus* appearing on this list also sets a frightening precedent for hundreds, if not thousands of other perennials. Hostas and daylilies spread in a manner very similar to Iris. If we do not ensure that plants are accurately and scientifically assessed for invasiveness, these plants or any other that your congressperson's neighbor complains about could be labeled invasive, named in a bill, and restricted.

It is also essential that anyone concerned about invasive plants have a thorough understanding of plant breeding. Most people have no idea that many plant species have cultivars bred to be very different from the parent species. It makes no logical sense to prohibit a plant species and all hybrids and cultivars, unless each individual cultivar and hybrid has also

been evaluated. I doubt that our lawmakers realized that by wording this law to include any "hybrid or genetically engineered variant" of any species listed, they prohibited two popular commercially important cultivars, *Fallopia japonica* 'Compacta' and *Fallopia japonica* 'Variegata'. Hortech, Walter's Gardens, Midwest Groundcovers, and Twixwood Nursery are all well-established nurseries that have grown these plants for decades. I have never talked to another grower who has seen either 'Compacta' or 'Variegata' set seed or escape out of landscapes into natural areas separated from the planting. This is a perfect example of a blanket prohibition of all hybrids and cultivars of a commercially important species having unintended effects on common and popular landscape plants.

Unfortunately, part of the 2005 law is likely to ensure that future legislation proceeds in the same misinformed manner. Passed Act 80 creates an invasive species fund in the state treasury, funded entirely by fines and permit fees collected as a result of the bill. In lean budget times, I am uncomfortable with the temptation to add to the list of restricted and prohibited plants to raise funds for the government council. The money in the fund is to be used only for administration and for "Public education about

preventing the introduction of, or eradicating prohibited species, restricted species, and other non-native species and genetically engineered fish, insects, and aquatic plants." Isn't this putting the cart before the horse? Lawmakers first need to recognize that they did not have an accurate definitive source of information on plants that are invasive in Michigan when they wrote and approved the present law. They need to include knowledgeable people in the legislative and educational process. Lastly, they need to designate and fund an accurate scientific system to determine what plant species truly are or are likely to be invasive in Michigan before they can even start to appropriately educate the public or introduce further legislation.

The MIPC Assessment Tool is the obvious choice to evaluate plants, as it was developed and endorsed by all groups affected by invasive plants, including representatives from both government and private sectors. A few plants have already been assessed, but with MIPC funded solely by small membership fees the pace of assessing plants is slower than ideal. Authorizing use of the invasive species fund to assess plants with this system would considerably speed the process and ensure that every plant receives an accurate assessment and


recommendation based on facts. Increased interest and membership in MIPC from concerned members of the green industry would also improve the flow of information. Our legislators would then have a reliable unbiased source of information specific to Michigan to guide their lawmaking decisions.

Members of the green industry and of our industry organizations must also demand that our congressional representatives keep us informed about important issues and legislation that may affect our businesses. The Executive Director of the MNLA and a vocal minority of members have been foresighted enough to ensure that members will hear about invasive plants through frequent articles in *The Michigan Landscape*™ magazine, mailed monthly to all members. MIPC maintains a website, mails a quarterly newsletter to all members, and plays a vital role in ensuring that official information about invasive plants in Michigan is scientifically documented

and correct. Individually, we *can* and *should* communicate with our government representatives — but collectively these organizations and others like them are the voice of an industry that contributes over \$1.2 billion annually to Michigan’s economy. Your membership and communication with these organizations ensures that advocates at the MNLA and MIPC will continue to take action and keep you informed.

While Public Acts 74-80 went into immediate effect in July 2005, they have not yet been enforced. The laws do not define clear responsibility for enforcement of the penalties outlined in Section 41309. Nurseries are assumed to be under the authority of the Michigan Department of Agriculture (MDA), and representatives of that agency have been in close contact with leaders of the MNLA. Our industry representatives are vigorously advocating the introduction of a bill that will amend the current law by allowing the MDA to approve exceptions for commercially valuable cultivars of

prohibited and restricted plant species. If passed quickly, this bill would prevent disruption of sales of *Iris pseudacorus* and *Fallopia japonica* cultivars in the spring of 2006. However, the wheels of government turn slowly, and there is no guarantee that we can repair the damage quickly enough.

Will it take a \$2,000 fine for you and your business to start caring about invasive plants and the current issues surrounding them? Or, will you educate yourself, contact your representative, and join MIPC now? If you don’t know who your Senators and Representatives are, you can easily find them at [www.legislature.mi.gov](http://www.legislature.mi.gov). If you want to learn more about invasive plants or become a member, visit the MIPC website. Call your friends at other nurseries and ask them to do the same. Above all, do your part to ensure that any future legislation regarding invasive plants is made by well-informed educated legislators using scientific evidence and accurate assessment of invasiveness. 

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