

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 391**

Final Reading

(Second)

Introduced by Schilz, 47; Carlson, 38.

Read first time January 13, 2011

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to invasive species; to amend sections 37-202,  
2 37-524, 37-547, and 37-548, Reissue Revised Statutes of  
3 Nebraska, and section 37-201, Revised Statutes Cumulative  
4 Supplement, 2010; to define terms; to prohibit activities  
5 relating to aquatic invasive species; to provide  
6 penalties; to provide duties for the Game and Parks  
7 Commission; to create the Nebraska Invasive Species  
8 Council; to provide powers and duties; to state intent;  
9 to harmonize provisions; to repeal the original sections;  
10 and to declare an emergency.

11 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 37-201, Revised Statutes Cumulative  
2 Supplement, 2010, is amended to read:

3           37-201 Sections 37-201 to 37-811 and sections 3 to 7 of  
4 this act shall be known and may be cited as the Game Law.

5           Sec. 2. Section 37-202, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           37-202 For purposes of the Game Law, unless the context  
8 otherwise requires, the definitions found in sections 37-203 to  
9 37-247 and sections 3 to 5 of this act are used.

10           Sec. 3. Aquatic invasive species means exotic or  
11 nonnative aquatic organisms listed in rules and regulations of the  
12 commission which pose a significant threat to the aquatic resources,  
13 water supplies, or water infrastructure of this state.

14           Sec. 4. Authorized inspector means a person who meets the  
15 requirements established in rules and regulations of the commission  
16 to inspect for aquatic invasive species and includes, but is not  
17 limited to, a conservation officer and a peace officer as defined in  
18 section 49-801.

19           Sec. 5. Conveyance means a motorboat as defined in  
20 section 37-1204, a personal watercraft as defined in section  
21 37-1204.01, a vessel as defined in section 37-1203, a trailer, or any  
22 associated equipment or containers which may contain or carry aquatic  
23 invasive species.

24           Sec. 6. (1) No person shall possess, import, export,  
25 purchase, sell, or transport aquatic invasive species except when

1 authorized commission personnel or the owner of a conveyance, or a  
2 person authorized by such owner, is removing an aquatic invasive  
3 species from a conveyance to be killed or immediately disposed of in  
4 a manner determined by the commission. The commission shall adopt and  
5 promulgate rules and regulations governing the inspection,  
6 decontamination, and treatment of conveyances capable of containing  
7 or transporting aquatic invasive species.

8 (2) Any person who (a) fails or refuses to submit to an  
9 inspection of a conveyance requested by an authorized inspector or  
10 (b) refuses to permit or prevents proper decontamination or treatment  
11 of a conveyance as prescribed by the authorized inspector is guilty  
12 of a Class III misdemeanor and upon conviction shall be fined not  
13 less than five hundred dollars. Such person's conveyance shall also  
14 be subject to impoundment.

15 Sec. 7. The commission shall adopt and promulgate rules  
16 and regulations to carry out section 6 of this act.

17 Sec. 8. Section 37-524, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 37-524 (1) It shall be unlawful for any person,  
20 partnership, limited liability company, association, or corporation  
21 to import into the state or possess aquatic invasive species, the  
22 animal known as the San Juan rabbit, or any other species of wild  
23 vertebrate animal, including domesticated cervine animals as defined  
24 in section 54-701.03, declared by the commission following public  
25 hearing and consultation with the Department of Agriculture to

1 constitute a serious threat to economic or ecologic conditions,  
2 except that the commission may authorize by specific written permit  
3 the acquisition and possession of such species for educational or  
4 scientific purposes. It shall also be unlawful to release to the wild  
5 any nonnative bird or nonnative mammal without written authorization  
6 from the commission. Any person, partnership, limited liability  
7 company, association, or corporation violating the provisions of this  
8 subsection shall be guilty of a Class IV misdemeanor.

9 (2) Following public hearing and consultation with the  
10 Department of Agriculture, the commission may, by rule and  
11 regulation, regulate or limit the importation and possession of any  
12 aquatic invasive species or wild vertebrate animal, including a  
13 domesticated cervine animal as defined in section 54-701.03, which is  
14 found to constitute a serious threat to economic or ecologic  
15 conditions.

16 Sec. 9. Section 37-547, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 37-547 It is the intent of the Legislature to prevent the  
19 release or importation into the State of Nebraska of any aquatic  
20 invasive species or any live wildlife which may cause economic or  
21 ecologic harm or be injurious to human beings, agriculture,  
22 horticulture, forestry, water, or wildlife or wildlife resources of  
23 the state. It is further the intent of the Legislature to prevent the  
24 commercial exploitation or exportation of any aquatic invasive  
25 species or any dead or live wildlife taken from the wild.

1                   Sec. 10. Section 37-548, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   37-548 (1) It shall be unlawful for any person to import  
4 into the state or release to the wild any aquatic invasive species or  
5 any live wildlife including the viable gametes, eggs or sperm, except  
6 those which are approved by rules and regulations of the commission  
7 or as otherwise provided in the Game Law. It shall be unlawful to  
8 commercially exploit or export from the state any aquatic invasive  
9 species or dead or live wildlife taken from the wild except those  
10 which are exempted by rules and regulations of the commission. Any  
11 person violating this subsection shall be guilty of a Class III  
12 misdemeanor.

13                   (2) The commission shall adopt and promulgate rules and  
14 regulations to carry out subsection (1) of this section. In adopting  
15 such rules and regulations, the commission shall be governed by the  
16 Administrative Procedure Act. Such rules and regulations shall  
17 include a listing of (a) the aquatic invasive species or wildlife  
18 which may be released or imported into the state and (b) the aquatic  
19 invasive species or wildlife taken from the wild which may be  
20 commercially exploited or exported from the state. The rules and  
21 regulations for release, importation, commercial exploitation, and  
22 exportation of species other than commercial fish and bait fish shall  
23 include, but not be limited to, requirements for annual permits for  
24 release or importation or for commercial exploitation or exportation,  
25 permit fees, the number of individual animals of a particular species

1 that may be released, imported, collected, or exported under a  
2 permit, and the manner and location of release or collection of a  
3 particular species. The rules and regulations may be amended,  
4 modified, or repealed from time to time, based upon investigation and  
5 the best available scientific, commercial, or other reliable data.

6 (3) The commission shall establish permit fees as  
7 required by subsection (2) of this section to cover the cost of  
8 permit processing and enforcement of the permits and research into  
9 and management of the ecological effects of release, importation,  
10 commercial exploitation, and exportation. The commission shall remit  
11 the fees to the State Treasurer for credit to the Wildlife  
12 Conservation Fund.

13 (4) The commission may determine that the release,  
14 importation, commercial exploitation, or exportation of aquatic  
15 invasive species or wildlife causes economic or ecologic harm by  
16 utilizing the best available scientific, commercial, and other  
17 reliable data after consultation, as appropriate, with federal  
18 agencies, other interested state and county agencies, and interested  
19 persons and organizations.

20 (5) The commission shall, upon its own recommendation or  
21 upon the petition of any person who presents to the commission  
22 substantial evidence as to whether such additional species will or  
23 will not cause ecologic or economic harm, conduct a review of any  
24 listed or unlisted species proposed to be removed from or added to  
25 the list published pursuant to subdivision (2)(a) of this section.

1 The review shall be conducted pursuant to subsection (4) of this  
2 section.

3 (6) The commission shall, upon its own recommendation or  
4 upon the petition of any person who presents to the commission  
5 substantial evidence that commercial exploitation or exportation will  
6 cause ecologic or economic harm or significant impact to ~~a~~an aquatic  
7 or wildlife population, conduct a review of any listed or unlisted  
8 species proposed to be added to or removed from the list published  
9 pursuant to subdivision (2)(b) of this section. The review shall be  
10 conducted pursuant to subsection (4) of this section.

11 Sec. 11. The Legislature finds that:

12 (1) The land, water, and other resources of Nebraska are  
13 being severely impacted by the invasion of an increasing number of  
14 harmful invasive species;

15 (2) These impacts are resulting in damage to Nebraska's  
16 environment and causing economic hardships; and

17 (3) The multitude of public and private organizations  
18 with an interest in controlling and preventing the spread of harmful  
19 invasive species in Nebraska need a mechanism for cooperation,  
20 communication, collaboration, and developing a statewide plan of  
21 action to meet these threats.

22 Sec. 12. For purposes of sections 11 to 16 of this act,  
23 invasive species means aquatic or terrestrial organisms not native to  
24 the region that cause economic or biological harm and are capable of  
25 spreading to new areas, and invasive species does not include

1 livestock as defined in sections 54-1368 and 54-1902, honey bees,  
2 domestic pets, intentionally planted agronomic crops, or nonnative  
3 organisms that do not cause economic or biological harm.

4           Sec. 13. (1) The Nebraska Invasive Species Council is  
5 created. Members of the council shall serve without compensation and  
6 shall not be reimbursed for expenses associated with their service on  
7 the council. The Game and Parks Commission shall provide  
8 administrative support to the council to carry out the council's  
9 duties, and the commission may adopt and promulgate rules and  
10 regulations to carry out sections 11 to 16 of this act.

11                   (2) Voting members of the council shall be appointed by  
12 the Governor and shall include a representative of:

13                           (a) An electric generating utility;

14                           (b) The Department of Agriculture;

15                           (c) The Game and Parks Commission;

16                           (d) The Nebraska Forest Service of the University of  
17 Nebraska Institute of Agriculture and Natural Resources;

18                           (e) The University of Nebraska-Lincoln;

19                           (f) The Nebraska Cooperative Fish and Wildlife Research  
20 Unit of the University of Nebraska;

21                           (g) The Nebraska Weed Control Association; and

22                           (h) The Nebraska Association of Resources Districts.

23                   (3) Voting members of the council shall also include up  
24 to five members at large appointed by the Governor who shall  
25 represent public interests, at least three of which shall represent

1 agricultural land owner interests.

2 (4) Nonvoting, ex officio members of the council shall  
3 include a representative of:

4 (a) The Midwest Region of the National Park Service of  
5 the United States Department of the Interior;

6 (b) The Animal and Plant Health Inspection Service of the  
7 United States Department of Agriculture;

8 (c) The Natural Resources Conservation Service of the  
9 United States Department of Agriculture;

10 (d) The United States Geological Survey; and

11 (e) The Nature Conservancy, Nebraska Field Office.

12 (5) The council may seek additional advisory support from  
13 representatives of relevant federal, state, or local agencies as it  
14 deems necessary to accomplish its duties.

15 (6) The council shall select a chairperson from among its  
16 members. The council shall meet at the call of the chairperson or  
17 upon the request of a majority of the members.

18 Sec. 14. The Nebraska Invasive Species Council shall:

19 (1) Recommend action to minimize the effects of harmful  
20 invasive species on Nebraska's citizens in order to promote the  
21 economic and environmental well-being of the state;

22 (2) Develop and periodically update a statewide adaptive  
23 management plan for invasive species as described in section 15 of  
24 this act;

25 (3) Serve as a forum for discussion, identification, and

1 understanding of invasive species issues;

2 (4) Facilitate the communication, cooperation, and  
3 coordination of local, state, federal, private, and nongovernmental  
4 entities for the prevention, control, and management of invasive  
5 species;

6 (5) Assist with public outreach and awareness of invasive  
7 species issues; and

8 (6) Provide information to the Legislature for decision  
9 making, planning, and coordination of invasive species management and  
10 prevention.

11 Sec. 15. The adaptive management plan required under  
12 section 14 of this act will address the following:

13 (1) Statewide coordination and intergovernmental  
14 cooperation;

15 (2) Prioritization of invasive species response and  
16 management;

17 (3) Early detection and prevention of new invasive  
18 species through deliberate or unintentional introduction;

19 (4) Inventory and monitoring of invasive species;

20 (5) Identification of research and information gaps;

21 (6) Public outreach and education;

22 (7) Identification of funding and resources available for  
23 invasive species prevention, control, and management; and

24 (8) Recommendations for legislation regarding invasive  
25 species issues.

1           Sec. 16. (1) The adaptive management plan required under  
2 section 14 of this act shall be updated at least once every three  
3 years following its initial development. The plan shall be submitted  
4 to the Governor and the Agriculture Committee of the Legislature.

5           (2) The Nebraska Invasive Species Council shall submit an  
6 annual report of its activities to the Governor and the Agriculture  
7 Committee of the Legislature by December 15 of each year. The annual  
8 report shall include an evaluation of progress made in the preceding  
9 year.

10           (3) The council shall complete the initial adaptive  
11 management plan within three years after the effective date of this  
12 act.

13           (4) Prior to the start of the 2015 legislative session,  
14 the council shall prepare a report to the Agriculture Committee of  
15 the Legislature that makes recommendations as to the extension or  
16 modification of the council.

17           (5) The council may establish advisory and technical  
18 subcommittees that the council considers necessary to aid and advise  
19 it in the performance of its functions.

20           Sec. 17. Original sections 37-202, 37-524, 37-547, and  
21 37-548, Reissue Revised Statutes of Nebraska, and section 37-201,  
22 Revised Statutes Cumulative Supplement, 2010, are repealed.

23           Sec. 18. Since an emergency exists, this act takes effect  
24 when passed and approved according to law.