

LEGISLATIVE BILL 274

Approved by the Governor May 12, 2017

Introduced by Halloran, 33.

A BILL FOR AN ACT relating to agriculture; to amend sections 2-1073, 2-10,110 and 2-10,116, Reissue Revised Statutes of Nebraska, and section 2-1091, Revised Statutes Cumulative Supplement, 2016; to change provisions relating to declaration of public policy, enforcement, powers, duties, authorized agreements, and rules and regulations under the Plant Protection and Plant Pest Act; to eliminate the Nebraska Rangeland Grasshopper Control Act; to repeal the original sections; and to outright repeal sections 2-1066, 2-1067, 2-1068, 2-1069, 2-1070, and 2-1071, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 2-1073, Reissue Revised Statutes of Nebraska, is amended to read:

2-1073 It is hereby declared to be the public policy of the State of Nebraska and the purpose of the Plant Protection and Plant Pest Act to protect and foster the health, prosperity, and general welfare of Nebraska residents its people by preserving and protecting the plant industry and the agricultural interests of the state. Because of the importance of the plant industry and agricultural interests to the welfare and economy of the state and the damage which can result from the uncontrolled proliferation of plant pests, there is a need to impose standards and restrictions on the movement and care of plants and the movement, treatment, control, and eradication of plant pests within the state. The Department of Agriculture shall be charged with administering and enforcing such standards and restrictions through the act Plant Protection and Plant Pest Act.

Sec. 2. Section 2-1091, Revised Statutes Cumulative Supplement, 2016, is amended to read:

2-1091 For the purpose of implementation or enforcement of the Plant Protection and Plant Pest Act or any rule or regulation, the department may:

(1) Enter at reasonable times and in a reasonable manner without being subject to any action for trespass or damages, if reasonable care is exercised, all property where plants are grown, packed, held prior to distribution, or distributed for the purpose of inspecting to inspect all plants, structures, vehicles, equipment, packing materials, containers, records, and labels on such property or otherwise implementing or enforcing the act. The department may inspect and examine all records and property relating to compliance with the act. Such records and property shall be made available to the department for review at all reasonable times;

(2) In a reasonable manner, hold for inspection and take samples of any plants and associated materials which may not be in compliance with the act;

(3) Inspect or reinspect at any time or place any plants that are in the state or being shipped into or through the state and treat, seize, destroy, require treatment or destruction of, or return to the state of origin any plants in order to inhibit or prevent the movement of plant pests throughout the state;

(4) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 from a court of record if any person refuses to allow the department to inspect pursuant to this section;

(5) Issue a written or printed withdrawal-from-distribution order and post signs to delineate sections not marked pursuant to subsection (3) of section 2-1095 or sections of distribution locations and to notify persons of any withdrawal-from-distribution order when the department has reasonable cause to believe any lot of nursery stock is being distributed in violation of the act or any rule or regulation;

(6) Apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond;

(7) Issue a quarantine or establish a quarantine area;

(8) Cooperate and enter into agreements, including harmonization plans, with any person in order to carry out the purpose of the act;

(9) Establish a restricted plant pest list to prohibit the movement into the state of plant pests not known to occur in Nebraska and to prohibit the movement of those plant pests present in the state but known to be destructive to the plant industry;

(10) Issue European corn borer quarantine certificates, phytosanitary certificates, and export certificates on plants for individual shipment to other states or foreign countries if those plants comply with the requirements or regulations of such state or foreign country or issue quarantine compliance agreements or European corn borer quarantine certification licenses;

(11) Inspect plants that any person desires to ship into another state or

country when such person has made an application to the department for such inspection. The inspection shall determine the presence of plant pests to determine the acceptance of the plants into other states or countries. The department may accept the inspections of laboratories authorized by the department or field inspectors of the department;

(12) Certify plants or property to meet the requirements of specific quarantines imposed on Nebraska or Nebraska plants. The quarantine certification requirements shall be set forth in the rules and regulations;

(13) Until increased or decreased by rules or regulations, assess and collect fees set forth in section 2-1091.02 for inspections, services, or work performed in carrying out subdivisions (8) and (10) through (12) of this section. Inspection time shall include the driving to and from the location of the inspection in addition to the time spent conducting the inspection, and the mileage charge shall be for the purpose of inspection. Any fee charged to the department relating to such subdivisions shall be paid by the person requesting the inspection, services, or work. The department may, for purposes of administering such subdivisions, establish in rules and regulations inspection requirements, standards, and issuance, renewal, or revocation of licenses, certificates, or agreements necessitated by such subdivisions;

(14) Conduct continuing survey and detection programs on plant pests to monitor the population or spread of plant pests;

(15) Implement programs or plans to eradicate, manage, treat, or control plant pests;

~~(16) (15)~~ Issue, place on probation, suspend, or revoke licenses issued or agreements entered into pursuant to the act or deny applications for such licenses or agreements pursuant to the act; and

~~(17) (16)~~ Issue orders imposing administrative fines or cease and desist orders pursuant to the act.

Sec. 3. Section 2-10,110, Reissue Revised Statutes of Nebraska, is amended to read:

2-10,110 The department may receive grants-in-aid or receive and disperse pass-through funds or otherwise cooperate and enter into agreements with the United States Department of Agriculture or any other person federal or state agency in the department's implementation or enforcement of the Plant Protection and Plant Pest Act or federal programs related to plant protection or plant pests in the state and the 1944 Organic Act of Congress, as amended, on October 1, 1988.

Sec. 4. Section 2-10,116, Reissue Revised Statutes of Nebraska, is amended to read:

2-10,116 The department shall have authority to adopt and promulgate such rules and regulations as are necessary to the effective discharge of its duties under the Plant Protection and Plant Pest Act. The rules and regulations may include, but shall not be limited to, provisions governing:

(1) The issuance and revocation of licenses as authorized by the Plant Protection and Plant Pest Act;

(2) The assessment and collection of license, inspection, reinspection, and delinquent fees;

(3) The withdrawal from distribution of nursery stock;

(4) The care, viability, and standards for nursery stock;

(5) The labeling and shipment of nursery stock;

(6) The issuance and release of plant pest quarantines and withdrawal-from-distribution orders;

(7) The establishment of a restricted plant pest list;

(8) The preparation, maintenance, handling, and filing of reports by persons subject to the act;

(9) The adoption of the American Association of Nurserymen's American Standard for Nursery Stock insofar as it does not conflict with any provision of the act;

(10) Factors to be considered when the director issues an order imposing an administrative fine; ~~and~~

(11) The planting of certified seed potatoes in the state; and ~~-~~

(12) The implementation of programs or plans involving the movement, treatment, control, and eradication of plant pests in the state.

Sec. 5. Original sections 2-1073, 2-10,110, and 2-10,116, Reissue Revised Statutes of Nebraska, and section 2-1091, Revised Statutes Cumulative Supplement, 2016, are repealed.

Sec. 6. The following sections are outright repealed: Sections 2-1066, 2-1067, 2-1068, 2-1069, 2-1070, and 2-1071, Reissue Revised Statutes of Nebraska.