LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 831

Introduced by Blood, 3.
Read first time January 03, 2024
Committee: Agriculture

A BILL FOR AN ACT relating to the Noxious Weed Control Act; to amend sections 2-945.01, 2-945.02, 2-952, 2-953, 2-954, 2-961, 2-963, and 2-965.01, Reissue Revised Statutes of Nebraska; to restate legislative findings and declarations; to define and redefine terms; to provide a duty for the Director of Agriculture; to provide a penalty; to provide for the control of restricted plants as prescribed; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 2-945.01, Reissue Revised Statutes of Nebraska, is amended to read:

2-945.01 Sections 2-945.01 to 2-970 and section 9 of this act shall be known and may be cited as the Noxious Weed Control Act.

Sec. 2. Section 2-945.02, Reissue Revised Statutes of Nebraska, is amended to read:

2-945.02 The Legislature finds and declares that:

(1) The failure to control noxious weeds and restricted plants on lands in this state is a serious problem that is detrimental to the production of crops and livestock, to the ecology of this state, and to the welfare of the residents of this state, all of which may devalue land and reduce tax revenue;

(2) It is the purpose of the Noxious Weed Control Act to establish a workable framework, delineate responsibilities, encourage education of the public concerning noxious weeds and restricted plants, and provide the necessary authority to effectively control noxious weeds and restricted plants;

(3) It is the duty of each person who owns or controls land to effectively control noxious weeds on such land. County boards or control authorities are responsible for administration of noxious weed control laws at the county level;

(4) The Department of Agriculture has the responsibility for (a) establishing basic standards such as designating plant species that are to be considered noxious weeds and which control measures to use are to be used in particular situations, (b) designating plant species that are restricted plants, and (c) monitoring implementation of the act by the control authorities; and

(5) A state noxious weed and restricted plant advisory committee shall be convened by the director with broad representation to advise the director.

Sec. 3. Section 2-952, Reissue Revised Statutes of Nebraska, is
amended to read:

2-952  (1) It shall be the duty of every person to control the
spread of noxious weeds on lands owned or controlled by him or her and to
use such methods for that purpose as are specified in rules and
regulations adopted and promulgated by the director.

(2) No person shall plant, propagate, offer for sale, sell, or
otherwise distribute a restricted plant that is included on the list of
restricted plants that is in the rules and regulations adopted and
promulgated by the director pursuant to section 2-954. No person shall be
required to destroy or otherwise control a restricted plant that is not
also determined to be a noxious weed, unless the person planted or
propagated the restricted plant.

Sec. 4. Section 2-953, Reissue Revised Statutes of Nebraska, is
amended to read:

2-953 For purposes of the Noxious Weed Control Act:

(1) Person means any individual, partnership, firm, limited
liability company, corporation, company, society, or association, the
state or any department, agency, or subdivision thereof, or any other
public or private entity;

(1)(a) (2)(a) Control, with respect to land, means the authority to
operate, manage, supervise, or exercise jurisdiction over or any similar
power. The state or federal government or a political subdivision shall
not be deemed to control land on which it has an easement as long as it
does not otherwise operate, manage, supervise, or exercise jurisdiction
over the land; and

(b) Control, with respect to weeds, means the prevention,
suppression, or limitation of the growth, spread, propagation, or
development or the eradication of weeds;

(3) County board means the county board of commissioners or
supervisors;

(4) Noxious weeds means and includes any weeds designated and listed
as noxious in rules and regulations adopted and promulgated by the
director;

(2) Control authority means the county weed district board or
the county board if it is designated as the control authority pursuant to
section 2-953.01, which board shall represent all rural areas and cities,
villages, and townships within the county boundaries;

(3) County board means the county board of commissioners or
supervisors;

(4) Director means the Director of Agriculture or his or her
designated representative; and

(5) Noxious weed means and includes any plant species designated and
listed as noxious in rules and regulations adopted and promulgated by the
director;

(6) Person means any individual, partnership, firm, limited
liability company, corporation, company, society, or association, the
state or any department, agency, or subdivision thereof, or any other
public or private entity;

(7) Restricted plant means any nonnative plant species that is
designated and listed as restricted in rules and regulations adopted and
promulgated by the director; and

(8) Weed management entity means an entity recognized by the
director as being established by and consisting of local stakeholders,
including tribal governments, for the purpose of controlling or
eradicating harmful, invasive weeds and increasing public knowledge and
education concerning the need to control or eradicate harmful, invasive
weeds.

Sec. 5. Section 2-954, Reissue Revised Statutes of Nebraska, is
amended to read:

2-954 (1)(a)(i) (1)(a) The duty of enforcing and carrying out the
Noxious Weed Control Act shall be vested in the director and the control
authorities as designated in the act.
(ii) The director shall determine the plant species that are noxious weeds and the plant species that are restricted plants what weeds are noxious for purposes of the act. A plant species may be designated as a noxious weed due to the detrimental effect of the species on crops, livestock, the ecology of this state, or the welfare of the residents of this state. A nonnative plant species may be designated as a restricted plant due to the detrimental effect of the species on crops, livestock, the ecology of this state, or the welfare of the residents of this state, or invasiveness of the species.

(iii) A list of the species of such noxious weeds and a list of the species of such restricted plants shall be included in the rules and regulations adopted and promulgated by the director. The director shall prepare, publish, and revise such lists as necessary a list of noxious weeds. Such lists The list shall be distributed to the public by the director, the Cooperative Extension Service, the control authorities, and any other body the director deems appropriate.

(iv) The director shall, from time to time, adopt and promulgate rules and regulations on methods for control of noxious weeds and adopt and promulgate such rules and regulations as are necessary to carry out the act.

(v) Whenever special weed control problems exist in a county involving weeds not included in the rules and regulations, the control authority may petition the director to bring such weeds under the county control program. The petition shall contain the approval of the county board. Prior to petitioning the director, the control authority, in cooperation with the county board, shall hold a public hearing and take testimony upon the petition. Such hearing and the notice thereof shall be in the manner prescribed by the Administrative Procedure Act. A copy of the transcript of the public hearing shall accompany the petition filed with the director. The director may approve or disapprove the request. If approval is granted, the control authority may proceed under the forced
control provisions of sections 2-953 to 2-955 and 2-958.

(b) The director shall (i) investigate the subjects subject of noxious weeds and restricted plants, (ii) require information and reports from any control authority as to the presence of noxious weeds and restricted plants and other information relative to noxious weeds and restricted plants and the control thereof in localities where such control authority has jurisdiction, (iii) cooperate with control authorities in carrying out other laws administered by him or her, (iv) cooperate with agencies of federal and state governments and other persons in carrying out his or her duties under the Noxious Weed Control Act, (v) with the consent of the Governor, conduct investigations outside this state to protect the interest of the agricultural industry of this state from noxious weeds and restricted plants not generally distributed therein, (vi) with the consent of the federal agency involved, control noxious weeds on federal lands within this state, with reimbursement, when deemed by the director to be necessary to an effective weed control program, (vii) advise and confer as to the extent of noxious weed infestations and the methods determined best suited to the control thereof, (viii) call and attend meetings and conferences dealing with the subject of noxious weeds and restricted plants, (ix) disseminate information and conduct educational campaigns with respect to control of noxious weeds and restricted plants, (x) procure materials and equipment and employ personnel necessary to carry out the director's duties and responsibilities, and (xi) perform such other acts as may be necessary or appropriate to the administration of the act.

(c) The director may (i) temporarily designate a plant species weed as a noxious weed or a restricted plant for up to eighteen months if the director, in consultation with the advisory committee created under section 2-965.01, has adopted criteria for making temporary designations and (ii) apply for and accept any gift, grant, contract, or other funds or grants-in-aid from the federal government or other public and private
sources for noxious weed or restricted plant control purposes and account
for such funds as prescribed by the Auditor of Public Accounts.

(d) When the director determines that a control authority has
substantively failed to carry out its duties and responsibilities as a
control authority or has substantively failed to implement a county weed
control program, he or she shall instruct the control authority regarding
the measures necessary to fulfill such duties and responsibilities. The
director shall establish a reasonable date by which the control authority
shall fulfill such duties and responsibilities. If the control authority
fails or refuses to comply with instructions by such date, the Attorney
General shall file an action as provided by law against the control
authority for such failure or refusal.

(2)(a) Each control authority shall carry out the duties and
responsibilities vested in it under the act with respect to land under
its jurisdiction in accordance with rules and regulations adopted and
promulgated by the director. Such duties shall include the establishment
of a coordinated program for control of noxious weeds and restricted
plants within the county.

(b) A control authority may cooperate with any person in carrying
out its duties and responsibilities under the act.

(3)(a) Each county board shall employ one or more weed control
superintendents. Each such superintendent shall, as a condition precedent
to employment, be certified in writing by the federal Environmental
Protection Agency as a commercial applicator under the Federal
Insecticide, Fungicide, and Rodenticide Act. Each superintendent shall be
bonded for such sum as the county board shall prescribe. The same person
may be a weed control superintendent for more than one county. Such
employment may be for such tenure and at such rates of compensation and
reimbursement for travel expenses as the county board may prescribe. Such
superintendent shall be reimbursed for mileage at a rate equal to or
greater than the rate provided in section 81-1176.
(b) Under the direction of the control authority, it shall be the duty of every weed control superintendent to examine all land under the jurisdiction of the control authority for the purpose of determining whether the Noxious Weed Control Act and the rules and regulations adopted and promulgated by the director have been complied with. The weed control superintendent shall: (i) Compile such data on infested areas and controlled areas, the sale and distribution of restricted plants, and such other reports as the director or the control authority may require; (ii) consult and advise upon matters pertaining to the best and most practical methods of noxious weed and restricted plant control and render assistance and direction for the most effective control; (iii) investigate or aid in the investigation and prosecution of any violation of the act; and (iv) perform such other duties as required by the control authority in the performance of its duties. Weed control superintendents shall cooperate and assist one another to the extent practicable and shall supervise the carrying out of the coordinated control program within the county.

(c) In cases involving counties in which municipalities have ordinances for weed control, the control authority may enter into agreements with municipal authorities for the enforcement of local weed ordinances and may follow collection procedures established by such ordinances. All money received shall be deposited in the noxious weed control fund or, if no noxious weed control fund exists, in the county general fund.

Sec. 6. Section 2-961, Reissue Revised Statutes of Nebraska, is amended to read:

2-961 The director, any control authority, any weed control superintendent, or anyone authorized thereby may enter upon all land under his, her, or its respective jurisdiction for the purpose of performing the duties and exercising the powers under the rules and regulations adopted and promulgated by the director and the Noxious Weed
Control Act, including the taking of specimens of weeds, **restricted plants**, or other materials, without the consent of the person owning or controlling such land and without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised.

Sec. 7. Section 2-963, Reissue Revised Statutes of Nebraska, is amended to read:

2-963 (1) Any person who intrudes upon any land under quarantine, who moves or causes to be moved any article covered by section 2-957 except as provided in such section, who prevents or threatens to prevent entry upon land as provided in section 2-961, who violates section 2-952, or who interferes with the carrying out of the Noxious Weed Control Act shall be guilty of a Class IV misdemeanor in addition to any penalty imposed pursuant to section 2-955.

(2) It shall be the duty of the county attorney of the county in which any violation of section 2-955 or this section occurs, when notified of such violation by the county board or control authority, to cause appropriate proceedings to be instituted and pursued in the appropriate court without delay.

Sec. 8. Section 2-965.01, Reissue Revised Statutes of Nebraska, is amended to read:

2-965.01 The director shall convene an advisory committee to advise the director concerning his or her responsibilities under the noxious weed and restricted plant control program. Representatives from the Nebraska Weed Control Association, the leafy spurge task force, state or federal agencies actively concerned with the control of noxious weeds or restricted plants, the University of Nebraska Institute of Agriculture and Natural Resources, and cities and villages of this state, persons actively involved in agriculture, and others in the public and private sector may serve on such committee at the request of the director. If an advisory committee is convened, members shall not receive any
Sec. 9. (1)(a) Notice for control of restricted plants shall consist of individual notice, which shall be on a form prescribed by this section. Failure to serve such individual notice as provided in this section shall not relieve any person from the necessity of full compliance with the Noxious Weed Control Act and rules and regulations adopted and promulgated pursuant to the act.

(b) Such notice shall be served in person to or to the last-known address of the person planting, propagating, offering for sale, selling, or otherwise distributing the restricted plant.

(2) Each control authority shall use the following form for all individual notices:

............. County Weed Control Authority

OFFICIAL NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, places an affirmative duty upon every person to not plant, propagate, offer for sale, sell, or otherwise distribute restricted plants. Information received by the control authority and an investigation relating to the information indicates a violation of section 2-952.

The restricted plant or plants and related violation or violations are ............... .

The remedy recommended by the control authority is as follows: ................................. .

Other appropriate remedies are acceptable if approved by the county weed control superintendent. If, within fifteen days from the date specified at the bottom of this notice, the remedy specified for each violation above has not been completed, you may, upon conviction, be subject to a fine of $100.00 per day per violation for each day of noncompliance beginning on ............... , up to a maximum of fifteen days of noncompliance (maximum $1,500 per violation).

Upon request to the control authority, within fifteen days from the
date specified at the bottom of this notice, you are entitled to a
hearing before the control authority to challenge the violation or
violations specified in this notice.

........................ Weed Control Superintendent
Dated.............

(3) At the request of any person served with an individual notice
pursuant to this section, the control authority shall hold an informal
public hearing to allow such person an opportunity to be heard on the
question of the violation or violations specified in the notice.

(4) Whenever the person has neglected or failed to remedy a
violation specified in a notice served under this section, the control
authority having jurisdiction shall proceed as follows:

(a) If, within fifteen days from the date specified on the notice
required by this section, the person has not taken action to remedy a
violation specified on the notice and has not requested a hearing
pursuant to subsection (3) of this section, the control authority shall
notify the county attorney who shall proceed against such person as
prescribed in this subdivision. A person who is responsible for planting,
propagating, offering for sale, selling, or otherwise distributing a
restricted plant and who refuses or fails to remedy the violation within
the time designated in the notice delivered by the control authority
shall, upon conviction, be guilty of an infraction pursuant to sections
29-431 to 29-438, except that the penalty shall be a fine of one hundred
dollars per day per violation for each day up to a total of one thousand
five hundred dollars for fifteen days of noncompliance per violation; or

(b) If, within ten days from the date specified in the notice
required by this section, the owner has not taken action to remedy a
violation in the notice and such violation warrants immediate action to
prevent a restricted plant from being planted, propagated, offered for
sale, sold, or otherwise distributed, the control authority may cause
proper control methods to be used, and shall advise the person of the
cost incurred in connection with such operation. The cost of any such control shall be at the expense of the person. Additionally, the control authority shall immediately cause notice to be filed of possible unpaid restricted plant control assessments against the property upon which the control measures were used in the register of deeds office in the county where the property is located. If unpaid for two months, the control authority shall certify to the county treasurer the amount of such expense and such expense shall become a lien on the property upon which the control measures were taken as a special assessment levied on the date of control. The county treasurer shall add such expense to and it shall become and form a part of the taxes upon such land and shall bear interest at the same rate as taxes.

(5) Nothing contained in this section shall be construed to limit satisfaction of the obligation imposed hereby in whole or in part by tax foreclosure proceedings. The expense may be collected by suit instituted for that purpose as a debt due the county or by any other or additional remedy otherwise available. Amounts collected under subdivision (4)(b) of this section shall be deposited to the noxious weed control fund of the control authority or, if no noxious weed control fund exists, to the county general fund.

Sec. 10. Original sections 2-945.01, 2-945.02, 2-952, 2-953, 2-954, 2-961, 2-963, and 2-965.01, Reissue Revised Statutes of Nebraska, are repealed.