

LEGISLATIVE BILL 391

Approved by the Governor April 5, 2012

Introduced by Schilz, 47; Carlson, 38.

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

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

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

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

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

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

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

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

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

Sec. 6. (1) No person shall possess, import, export, purchase, sell, or transport aquatic invasive species except when authorized commission personnel or the owner of a conveyance, or a person authorized by such owner, is removing an aquatic invasive species from a conveyance to be killed or immediately disposed of in a manner determined by the commission. The commission shall adopt and promulgate rules and regulations governing the inspection, decontamination, and treatment of conveyances capable of containing or transporting aquatic invasive species.

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

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

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

37-524 (1) It shall be unlawful for any person, partnership, limited liability company, association, or corporation to import into the state or possess aquatic invasive species, the animal known as the San Juan rabbit, or any other species of wild vertebrate animal, including domesticated cervine animals as defined in section 54-701.03, declared by the commission following public hearing and consultation with the Department of Agriculture to constitute a serious threat to economic or ecologic conditions, except that the commission may authorize by specific written permit the acquisition and possession of such species for educational or scientific purposes. It shall also be unlawful to release to the wild any nonnative bird or nonnative mammal without written authorization from the commission. Any person, partnership, limited liability company, association, or corporation violating the provisions of this subsection shall be guilty of a Class IV misdemeanor.

(2) Following public hearing and consultation with the Department of Agriculture, the commission may, by rule and regulation, regulate or

limit the importation and possession of any aquatic invasive species or wild vertebrate animal, including a domesticated cervine animal as defined in section 54-701.03, which is found to constitute a serious threat to economic or ecologic conditions.

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

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

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

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

(2) The commission shall adopt and promulgate rules and regulations to carry out subsection (1) of this section. In adopting such rules and regulations, the commission shall be governed by the Administrative Procedure Act. Such rules and regulations shall include a listing of (a) the aquatic invasive species or wildlife which may be released or imported into the state and (b) the aquatic invasive species or wildlife taken from the wild which may be commercially exploited or exported from the state. The rules and regulations for release, importation, commercial exploitation, and exportation of species other than commercial fish and bait fish shall include, but not be limited to, requirements for annual permits for release or importation or for commercial exploitation or exportation, permit fees, the number of individual animals of a particular species that may be released, imported, collected, or exported under a permit, and the manner and location of release or collection of a particular species. The rules and regulations may be amended, modified, or repealed from time to time, based upon investigation and the best available scientific, commercial, or other reliable data.

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

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

(5) The commission shall, upon its own recommendation or upon the petition of any person who presents to the commission substantial evidence as to whether such additional species will or will not cause ecologic or economic harm, conduct a review of any listed or unlisted species proposed to be removed from or added to the list published pursuant to subdivision (2)(a) of this section. The review shall be conducted pursuant to subsection (4) of this section.

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

Sec. 11. The Legislature finds that:

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

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

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

Sec. 12. For purposes of sections 11 to 16 of this act, invasive species means aquatic or terrestrial organisms not native to the region that cause economic or biological harm and are capable of spreading to new areas, and invasive species does not include livestock as defined in sections 54-1368 and 54-1902, honey bees, domestic pets, intentionally planted agronomic crops, or nonnative organisms that do not cause economic or biological harm.

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

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

- (a) An electric generating utility;
- (b) The Department of Agriculture;
- (c) The Game and Parks Commission;
- (d) The Nebraska Forest Service of the University of Nebraska Institute of Agriculture and Natural Resources;
- (e) The University of Nebraska-Lincoln;
- (f) The Nebraska Cooperative Fish and Wildlife Research Unit of the University of Nebraska;

(g) The Nebraska Weed Control Association; and

(h) The Nebraska Association of Resources Districts.

(3) Voting members of the council shall also include up to five members at large appointed by the Governor who shall represent public interests, at least three of which shall represent agricultural land owner interests.

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

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

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

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

(d) The United States Geological Survey; and

(e) The Nature Conservancy, Nebraska Field Office.

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

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

Sec. 14. The Nebraska Invasive Species Council shall:

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

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

(3) Serve as a forum for discussion, identification, and understanding of invasive species issues;

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

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

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

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

(1) Statewide coordination and intergovernmental cooperation;

(2) Prioritization of invasive species response and management;

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

(4) Inventory and monitoring of invasive species;

(5) Identification of research and information gaps;

(6) Public outreach and education;

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

(8) Recommendations for legislation regarding invasive species issues.

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

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

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

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

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

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

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