

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 391

Final Reading

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; and to repeal the original
10 sections.

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 a

1 species is being removed from a conveyance and is caught and
2 immediately killed or disposed of properly as determined by the
3 commission. The commission shall adopt and promulgate rules and
4 regulations governing the inspection, decontamination, and treatment
5 of conveyances capable of containing or transporting aquatic invasive
6 species.

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

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

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

18 37-524 (1) It shall be unlawful for any person,
19 partnership, limited liability company, association, or corporation
20 to import into the state or possess aquatic invasive species, the
21 animal known as the San Juan rabbit, or any other species of wild
22 vertebrate animal, including domesticated cervine animals as defined
23 in section 54-701.03, declared by the commission following public
24 hearing and consultation with the Department of Agriculture to
25 constitute a serious threat to economic or ecologic conditions,

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

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

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

17 37-547 It is the intent of the Legislature to prevent the
18 release or importation into the State of Nebraska of any aquatic
19 invasive species or any live wildlife which may cause economic or
20 ecologic harm or be injurious to human beings, agriculture,
21 horticulture, forestry, water, or wildlife or wildlife resources of
22 the state. It is further the intent of the Legislature to prevent the
23 commercial exploitation or exportation of any aquatic invasive
24 species or any dead or live wildlife taken from the wild.

25 Sec. 10. Section 37-548, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 37-548 (1) It shall be unlawful for any person to import
3 into the state or release to the wild any aquatic invasive species or
4 any live wildlife including the viable gametes, eggs or sperm, except
5 those which are approved by rules and regulations of the commission
6 or as otherwise provided in the Game Law. It shall be unlawful to
7 commercially exploit or export from the state any aquatic invasive
8 species or dead or live wildlife taken from the wild except those
9 which are exempted by rules and regulations of the commission. Any
10 person violating this subsection shall be guilty of a Class III
11 misdemeanor.

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

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

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

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

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

1 section.

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

10 Sec. 11. The Legislature finds that:

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

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

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

21 Sec. 12. For purposes of sections 11 to 16 of this act,
22 invasive species means aquatic or terrestrial organisms not native to
23 the region that cause economic or biological harm and are capable of
24 spreading to new areas, and invasive species does not include
25 livestock as defined in sections 54-1368 and 54-1902, honey bees,

1 domestic pets, intentionally planted agronomic crops, or nonnative
2 organisms that do not cause economic or biological harm.

3 Sec. 13. (1) The Nebraska Invasive Species Council is
4 created.

5 (2) Voting members of the council shall include a
6 designated representative of:

7 (a) An electric generating utility;

8 (b) The Department of Agriculture;

9 (c) The Game and Parks Commission;

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

12 (e) The University of Nebraska-Lincoln;

13 (f) The Nebraska Cooperative Fish and Wildlife Research
14 Unit of the University of Nebraska;

15 (g) The Nebraska Weed Control Association; and

16 (h) The Nebraska Association of Resources Districts.

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

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

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

25 (b) The Animal and Plant Health Inspection Service of the

1 United States Department of Agriculture;

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

4 (d) The United States Geological Survey; and

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

6 (5) The council shall extend membership to those entities
7 deemed necessary to accomplish the council's duties.

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

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

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

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

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

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

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

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

3 (1) Statewide coordination and intergovernmental
4 cooperation;

5 (2) Prioritization of invasive species response and
6 management;

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

9 (4) Inventory and monitoring of invasive species;

10 (5) Identification of research and information gaps;

11 (6) Public outreach and education;

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

14 (8) Recommendations for legislation regarding invasive
15 species issues.

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

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

25 (3) The council shall complete the initial adaptive

1 management plan within three years after the effective date of this
2 act.

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

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

10 Sec. 17. Original sections 37-202, 37-524, 37-547, and
11 37-548, Reissue Revised Statutes of Nebraska, and section 37-201,
12 Revised Statutes Cumulative Supplement, 2010, are repealed.