

WEEDS

CHAPTER 594

SENATE BILL NO. 2180
(Morgan, Melland, Thoreson, Christensen)

CONTROL OF NOXIOUS WEEDS

AN ACT to create and enact chapter 63-01.1 of the North Dakota Century Code, relating to the control and eradication of noxious weeds, the authority and duties of the commissioner of agriculture and the governing bodies of the political subdivisions in regard to noxious weed control, and creating the office of county weed control officer; to repeal subsection 71 of section 40-05-01 and chapters 63-01, 63-02, 63-03, and 63-04 of the North Dakota Century Code, relating to weed eradication and control; and providing penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) Chapter 63-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

63-01.1-01. CONTROL AND ERADICATION OF NOXIOUS WEEDS.)
It shall be the duty of every person to eradicate or to control the spread of noxious weeds on lands owned or controlled by him in the state of North Dakota.

63-01.1-02. DEFINITIONS.) As used in this chapter:

1. "Person" means any individual, partnership, firm, corporation, company, society, association, the state or any department, agency, or subdivision thereof, or any other entity which occupies or controls land or which causes noxious weed seeds or propagating parts to be disseminated or transported in North Dakota.
2. "Control", "controlled", or "controlling" includes being in charge of or being in possession of land, whether as owner, lessee, renter, tenant, under statutory authority, or otherwise.
3. "Commissioner" herein referred to means the duly elected North Dakota state commissioner of agriculture.
4. "Noxious weed" means any plant propagated by either seed or vegetative parts which is determined by the commissioner after consulting with the state cooperative extension service, to be injurious to public health,

crops, livestock, land, or other property.

5. "Control authority" means the commissioner and those he may designate to act in his behalf, the governing body of each county in North Dakota and the governing body of each irrigation district, city, soil conservation district, or other political subdivision with a noxious weed control program organized under this chapter.
6. "Control" as applied to weed control means to prevent the spread of any noxious weed, designated by the commissioner, by seed or any other propagating part thereof.

63-01.1-03. STATE WEED CONTROL AUTHORITY - COMMISSIONER OF AGRICULTURE - POWERS AND DUTIES.)

1. The duty of enforcing this chapter and carrying out its provisions and intent is vested in the commissioner who may designate employees of his department and local weed control officers to act in his behalf, but under his supervision and direction.
2. The commissioner shall determine which weeds are noxious for the purposes of this chapter after consulting with the state cooperative extension service, and shall compile and keep current a list of such noxious weeds.
3. The commissioner shall outline procedures, prepare and supply official notices, posters, report forms, and such other documents as are needed in carrying out the provisions of this chapter. Such documents shall be supplied to weed control officers, county and special control authorities, and others as needed to carry out an effective weed control program. Official notices or posters such as the noxious weed list, rules and regulations, dates for controlling, and other compliance requirements shall be prepared by the commissioner ready for printing in official newspapers, or for posting at least annually.
4. The commissioner shall cooperate with the county and special control authorities, local weed control officers, highway patrol officers, county sheriffs, the truck regulatory division, and others in carrying out his duties under this chapter. He shall also encourage the state cooperative extension service to disseminate information and to conduct educational campaigns with respect to eradication and control of noxious weeds.
5. The commissioner upon receiving complaints in writing

- from persons shall immediately refer the complaint to the proper weed control officer, and county or special control authority.
6. The commissioner shall encourage the cooperation of program agencies of both the federal and state governments in furtherance of the purposes of this chapter.
 7. The commissioner shall prescribe, in accordance with chapter 28-32 of the North Dakota Century Code, and cause to be published, such rules, regulations, and procedures as he deems necessary to carry out the intent of this chapter.
 8. The commissioner shall require a minimum number of operational or program reports from weed control authorities or weed control officers as deemed necessary to keep posted on weed control progress and activity in the state.
 9. The commissioner shall call an annual meeting of all weed control officers, either statewide or by areas, to review the intent, operation, procedures, and accomplishments under this chapter and may also request the extension service or others to present educational information on weed control practices. Weed control authority members shall be invited to attend meetings called pursuant to this subsection.
- 63-01.1-04. COUNTY CONTROL AUTHORITY - POWERS AND DUTIES.)
1. The board of county commissioners of each county in the state shall be the control authority for that county.
 2. The board of county commissioners shall appoint or designate a county weed control officer who shall cooperate with the commissioner and be responsible for operation and enforcement of this chapter within the county. Such officer may be a member of the board of county commissioners or may be any other interested and able person. The same person may serve as weed control officer for more than one county. Employment may be for such tenure, and at such rates of compensation and reimbursement for travel expenses as the county commissioners may prescribe and shall be without regard to any provisions of law relating to age or dual compensation. Compensation for the weed control officer and other necessary expenses shall be paid out of the general funds of the county as provided in section 63-01.1-06. The appointment or designation of a weed control officer shall be certified by the control authority to the commissioner.

63-01.1-05. DUTIES OF WEED CONTROL OFFICER.) The weed control officer shall:

1. Cooperate with the control authority, the county extension agent, township supervisors, county land users, the commissioner, and others in furtherance of the provisions of this chapter.
2. Become acquainted with the location of noxious weeds on all land within the county.
3. Through personal contact, by letter, telephone, or other means, encourage noxious weed control or eradication by all landowners or occupants within the control authority area.
4. Investigate all complaints received by himself, the control authority, or the commissioner. If the control officer determines that the complaint is justified, he shall issue written notice to the person controlling the land, which notice shall require that person to control or eradicate noxious weeds on his land within five days, unless additional time is requested from and granted by the control authority, or be subject to the penalties provided in section 63-01.1-15. Complaints, subject to the approval of the control authority, may be initiated by the control officer, and notice served in accordance with this subsection.
5. Cause to be posted or inserted in official newspapers such official notices as the commissioner may deem necessary in the furtherance of this chapter.
6. Prepare reports as requested by the commissioner.
7. Attend area or statewide meetings called by the commissioner for the purpose of assisting in the effective execution of this chapter.

63-01.1-06. FUNDING COUNTY PROGRAMS.)

1. The board of county commissioners may pay from the general fund expenses in any one year in furtherance of this weed control chapter, including weed control along county highways.
2. The board of county commissioners of any county, when it deems it necessary or when petitioned by at least five percent of the voters voting in the last general election, may submit the question of whether to levy a tax, not to exceed two mills on the assessed valuation of all taxable property therein, to the electorate of the county. The levy may be made to cover the salary and expenses of the county weed control officer,

the expense of weed control along county highways, and other expenses incurred in the operation of an effective weed control program in the county. Upon approval of sixty percent of the voters of the county voting on the question, the tax may be levied in excess of the mill levy limit prescribed by law for general purposes.

63-01.1-07. SPECIAL WEED CONTROL AUTHORITIES.) The governing body of any township, city, irrigation district, soil conservation district, or any other political subdivision, individually or collectively, may establish a weed control authority for the purpose of cooperating under this chapter and to carry on such other weed control activities within the authority as it may deem necessary. The governing body shall act as the special weed control authority, except that in the case of creation of a collective special weed control authority, the membership of the authority shall be limited to six persons as designated by the respective governing bodies.

Such special weed control authority may appoint one of its own number or another person as weed control officer. The control authority and weed control officer shall be financed with funds already available. If a special tax levy is needed to finance a program pursuant to this section, it must be approved by a majority of the electors within the area included in such authority. Special weed control authorities may join together in employing a weed control officer whose duties shall be as described under section 63-01.1-05.

63-01.1-08. ENTRY UPON LAND FOR WEED CONTROL PURPOSES.) The commissioner, any control authority, weed control officer, or anyone authorized thereby, may enter upon all land under their jurisdiction for the purpose of performing their duties and exercising their powers under this chapter, including the taking of specimens of weeds 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.

63-01.1-09. COUNTY COMMISSIONERS TO DESTROY NOXIOUS WEEDS ALONG COUNTY HIGHWAYS.) The county commissioners shall eradicate or control noxious weeds as defined in this law along all county highways within the county and the expense thereof shall be paid from funds as provided in section 63-01.1-06.

63-01.1-10. TOWNSHIPS TO CONTROL NOXIOUS WEEDS ALONG TOWNSHIP ROADS.) The townships' supervisors in organized townships and the county commissioners in unorganized townships shall eradicate or control noxious weeds as defined in this law along all township roads and highways. The expense incurred in carrying out the provisions of this section shall be paid out of any funds raised by tax levy in organized or unorganized townships, including money in the road and bridge fund.

63-01.1-11. LANDOWNERS OR OPERATORS ALONG COUNTY AND TOWNSHIP HIGHWAYS TO DESTROY WEEDS AND GRASSES.)

1. It is the duty of landowners or operators with land adjoining regularly traveled county and township highways, as designated by the township board of supervisors in organized townships, the board of county commissioners in unorganized townships, and the board of county commissioners in the case of county highways, to cut all weeds and grasses along such regularly traveled highways adjoining their lands, including weeds and grasses growing within the public right-of-way bordering such highways and their lands. Such cutting shall be completed not later than September fifteenth or October first, as shall be prescribed by the board of county commissioners.
2. The board of county commissioners of each county shall prescribe the time of cutting of such weeds and grasses, designate the county highways to be cut, and request the board of township supervisors to designate township roads to be cut. Notice of such action shall be published in the official county newspaper at least twice, and the last such publication shall appear not less than two weeks prior to the deadline date. If no official newspaper is published in the county, written notice shall be given by posting, in the same manner as election notices are posted.
3. If the landowner or operator fails to cut the weeds and grasses along the designated highways or roads as provided in this section, the board of township supervisors or the board of county commissioners, as the case may be, may cause such weeds and grasses to be cut and the actual expense of cutting shall be certified to the county auditor, and all of such expenses shall be charged against the land of the landowner and shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto.
4. As used in this section, the word "operator" shall mean the person chiefly responsible for the farming or other operations being performed on the land, whether for his own benefit, or for the benefit of the landowner or another.

63-01.1-12. PREVENTING DISSEMINATION OF NOXIOUS WEEDS.)

1. To prevent the dissemination of noxious weeds by

machinery, trucks, harvesting, or other farm equipment, or during transportation of plants, forage, screenings, dirt, and other articles which may be transported by any means, the commissioner shall, from time to time, publish a list of the possible methods of disseminating the propagating parts of such weeds.

2. Custom or commercial operators of tillage, seeding, and harvesting equipment shall be required to clean such equipment to prevent the spread of noxious weeds by seed or other propagating parts prior to moving such equipment on public highways, airways, waterways, or by any other means of conveyance, public or otherwise. Trucks or trailers transporting grain screenings shall be constructed and covered so as to prevent weed seed dissemination. Scattering and dumping on land or in water of any material containing noxious weed seeds or propagating parts is prohibited unless such material has been processed or treated, or is buried sufficiently deep to destroy seeds and other propagating parts.

63-01.1-13. PUBLICLY OWNED LAND - WEED CONTROL.) The commissioner shall make every effort possible to arrange a satisfactory noxious weed eradication or control program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state. Weed control officers shall make every effort possible to arrange a satisfactory noxious weed eradication or control program with cities, park boards, cemeteries, school boards, counties, and other local entities owning or controlling public land within the control authority. State agencies controlling or having jurisdiction over lands within the state shall provide for eradication or control of noxious weeds on such lands.

63-01.1-14. WEED CONTROL ENFORCEMENT RESPONSIBILITIES OF OTHER AGENCIES.) The state highway patrol, county sheriffs, and the truck regulatory division shall, when requested to do so by a local weed control officer or a weed control authority, cooperate with local weed control officers and the commissioner, and shall have the authority to enforce subsection 2 of section 63-01.1-12 where machinery, commodities, or articles are being moved on state and federal highways or on county or township roads and may be contributing to the dissemination of noxious weeds.

63-01.1-15. PENALTIES.)

1. Any person who violates the provisions of subsection 2 of section 63-01.1-12 shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed one hundred dollars, plus costs, for the first offense, and a fine of five hundred dollars, plus costs, for

any subsequent offense. The weed control officers or control authorities shall institute necessary criminal actions under this subsection.

2. Persons failing to comply with the rules, regulations, and notices promulgated pursuant to the provisions of this chapter shall be subject to a civil penalty not to exceed five hundred dollars. Necessary court action may be pursued by the weed control officer or authority.

63-01.1-16. ALLEGATIONS OF NONCOMPLIANCE.) Any landowner or occupant may call attention to noncompliance with this chapter, or the rules, regulations, or notices promulgated thereunder, by filing his complaint in writing with the local weed control officer who shall take necessary action.

63-01.1-17. JUDICIAL REVIEW.) The validity or applicability of rulemaking or regulatory action taken, or civil penalties assessed pursuant to this chapter, by the commissioner, or anyone acting under his authority, may be determined by an appeal to a district court in accordance with sections 28-32-15 through 28-32-21.

SECTION 2. REPEAL.) Subsection 71 of section 40-05-01 and chapter 63-01, 63-02, 63-03, and 63-04 of the North Dakota Century Code are hereby repealed.

Approved March 27, 1971