

ONE HUNDRED THIRD LEGISLATURE - FIRST SESSION - 2013
COMMITTEE STATEMENT
LB68

Hearing Date: Tuesday January 29, 2013
Committee On: Agriculture
Introducer: Schilz
One Liner: Change provisions of the Plant Protection and Plant Pest Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Bloomfield, Chambers, Hansen, Harr, Johnson, Lathrop, Schilz, Wallman

Nay:

Absent:

Present Not Voting:

Proponents:

Senator Ken Schilz
Greg Ibach
Julie Van Neter
Chuck Hamernik
Jake Sittner
Dan Mulhall

Representing:

Introducer
Nebraska Department of Agriculture
Nebraska Department of Agriculture
Nebraska Nursery and Landscape Association
NNLA
Mulhalls Nursery

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 68 makes a series of revisions to the Plant Protection and Plant Pest Act to assist administration of the act, to clarify fee provisions and to clarify enforcement authorities as follows:

The Act currently licenses three categories of commercial nursery activities, growers, dealers and brokers. Additionally, persons who gather wild plants for commercial distribution are required to obtain a growers license. LB 68 would replace these categories with a single nursery stock distributor license. A definition of nursery stock distributor is inserted by section 7 of the bill to encompass all activities currently subject to one of the three existing license categories. Section 2-1091.01 is amended by section 9 of the bill by requiring licensure to operate as a nursery stock distributor. Existing licenses as a grower, dealer or broker would remain valid through Dec. 31, 2013.

Harmonizing revisions are made throughout the Act as necessary to accommodate the consolidation of the three license categories into a single license category, as follows.

New sections 3 and 4 insert new defined terms certification inspection of Nebraska grown nursery stock and grow. The certification inspection refers to the existing nursery grower inspection found at section 2-1095. The insertion of the defined term grow is necessary due to the consolidation of license categories to confine the grower inspection to those licensees that currently are subject to inspection.

Section 2-1095 is amended by section 10 to incorporate the requirements for nursery stock distributors who grow and distribute nursery stock in Nebraska. As currently applicable to grower licensees, nursery stock distributors who grow nursery stock in Nebraska would be required to apply for certification inspection. The certification standards inserted into 2-1095 consolidate those contained in existing sections 2-1092 through 2-1096 and remain substantially unchanged.

Harmonizing revisions are made elsewhere throughout the Act by sections 9, 10, 12, 13, 14, 16, 17, 19 and section 20 to utilize the term nursery stock distributor.

Several existing sections of the Act that become obsolete due to the consolidation of the license categories under the single nursery stock dealer license are outright repealed. Necessary provisions of repealed statutes are relocated as necessary to retain certification and other requirements of licensees.

Section 11 of LB68 consolidates fees charged at various locations under the Act in a new section of the Act. The bill establishes uniform annual Nursery Stock Distributor license fee of \$115 for the first acre and \$5 for each additional acre for each distribution location, with authority to adjust within a statutory maximum of \$140 and \$6 for each additional acre. This fee schedule replaces the fees charged dealers and brokers under outright repealed section sections 2-1097 and 2-10,100.01, currently at the existing statutory maximum of \$100 per distribution location regardless of size.

The Nursery Stock Distributor license fee schedule also replaces the required certification inspection fee charged growers under outright repealed section 2-1092. Nursery stock distributors that grow nursery stock would be required to apply for certification inspection of Nebraska-grown stock under 2-1095 as amended by Section 10 of the bill but would no longer be charged a separate inspection fee provided application for inspection is received by January 1, or prior to distribution for new licensees. Late applications for certification would be charged an inspection fee of \$24 per hour and 42 cents per mile. Amendments to 2-1095 provide that inspection time includes driving time. This charges are identical to those as currently set in regulation.

Amendment to 2-1091.01 provides that the Nursery Stock Distributor License expires on December 31 and the deadline for renewal is set for January 1. Additionally, applications for certification inspection and any associated inspection fee, would accompany the license renewal application. Currently, annual license renewal for the existing licensure categories are set at different times of the year and certification inspection fees are collected at the time of inspection.

Section 11 also sets forth fees charged for various voluntary certification and licensure requested by industry for which the Department provides 3rd party verification services as authorized by 2-1091 and other sections of the Act. The initial statutory fee schedule for these services codifies existing schedules as imposed by regulation and establishes statutory maximums for these fees.

LB 68 makes a series of revisions to enforcement authorities exercised by the Department, including the following:

Subsection (2) of Section 11 provides for a uniform late fee assessment replacing late fee payment provisions found in the act. LB 68 imposes an administrative surcharge of 25% of the delinquent amount for each month delinquent not to exceed 100% of the unpaid fee. The bill declares the fee to be for recovery of additional administrative expense in collecting the fee and directs late fees to be remitted to the program cash fund.

2-1091 of the act, setting forth general authorities that may be exercised in the administration and enforcement of the Act, is amended by Section 8 to expressly authorize the issuance of quarantine certificates and licensure, and to clarify that authority to enter into cooperative agreements includes harmonizing plans. Harmonizing plans, a term utilized in federal regulatory schemes, is added as a new defined term by section 5 of the bill.

The definition of nursery stock is amended by section 6. The new language clarifies that a plant must be perennial and hardy (consistently survives in Nebraska hardiness zones). The addition of botanically classified hardy plants to the existing definition clarifies the intent of the Act to regulate nursery stock capable of consistently surviving in the state

with life cycles of greater than one year and therefore have an increased risk of plant pests.

The maximum administrative fine that may be imposed for violations of the act as set forth in 2-10,103.02(1) as amended by section 15 of the bill is increased from \$500 to \$1000 per violation, with violation defined as each action violating a distinct requirement of the act. Language regarding disposition of the fines is clarified to be consistent with its distribution according to Article VII, Section 5.

2-10,103.04 pertaining to administrative process in disciplinary proceedings and actions, is amendment to clarify that the Department's authority to issue notices and orders extends to any person violating the act. Currently the department's authority is limited to licensees. Provision regarding elements to be included in notice of disciplinary proceedings relevant to only licensees is revised to generically require notice of potential actions that may be taken against the violator.

A new section of the act inserted by Section 21 of the bill imposes a liability for costs incurred by the Department in enforcement of quarantines and withdrawal orders to the persons in possession of plants or in violation of act. This section further declares the Department is not liable for costs incurred by any person due to the Department's actions in enforcement.

Explanation of amendments:

The Committee amendment (AM333) strikes section 21 and relocates its provisions to Section 2-10,111 after striking existing text regarding assignment of costs. The amendment also corrects an internal reference in section 11 of the bill.

Ken Schilz, Chairperson