

ACT 92

S.B. NO. 982

A Bill for an Act Relating to Noxious Weed Control.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 152-1, Hawaii Revised Statutes, is amended to read as follows:

**“§152-1 Definitions.** For the purpose of this chapter, unless otherwise required by context:

“Control noxious weed” means to limit the spread of a specific noxious weed and to reduce its density to a degree where its injurious, harmful, or deleterious effect is reduced to a tolerable level.

## ACT 92

"Cooperative agreement" means an agreement between the department and the landowner and land occupier for the control or eradication of a noxious weed infestation.

"Department" means the department of agriculture.

"Eradicate noxious weed" means to completely destroy and eliminate existing plant growth, seeds, and vegetative reproductive plant parts of a specific noxious weed from a given locality.

"Land occupier" means a person who occupies, resides on, or utilizes land or real estate of a landowner.

"Landowner" means the possessor of a fee simple absolute title in land or real estate and shall include the State [as well as] and its political subdivisions in their capacities as owners of public lands.

"Noxious weed" means [gorse and] any [other] plant species which is [injurious, harmful or deleterious], or which may be likely to become [so], injurious, harmful, or deleterious to the agricultural, horticultural, aquacultural, or livestock [industries] industry of the State[,] and to forest and recreational areas and conservation districts of the State, as determined and [so] designated by the department from time to time.

"Person" means any individual, firm, corporation, association, or partnership."

SECTION 2. Section 152-2, Hawaii Revised Statutes, is amended to read as follows:

**"§152-2 Rules [and regulations].** [The department of agriculture shall have all powers necessary to carry out and to effectuate this chapter, by rules and regulations including but not limited to the following:] Subject to chapter 91, the department may make rules to effectuate this chapter, including but not limited to the following:

- (1) [To establish] Establishment of criteria and procedures for the designation of plant species as noxious weeds for the purposes of this chapter;
- (2) [To establish] Establishment of procedures and conditions for the initiation of cooperative agreements with landowners and land occupiers for the purpose of eradicating or controlling noxious weed infestations;
- (3) [To promulgate necessary rules and regulations necessary to control or eradicate] Control or eradication of noxious weeds when deemed economically feasible[]; provided that all rules and regulations shall be in compliance with all other laws concerning the making of rules and regulations which shall have the force and effect of law]."

SECTION 3. Section 152-3, Hawaii Revised Statutes, is amended to read as follows:

**"§152-3 Prohibited acts.** It shall be unlawful to introduce or to transport specific noxious [weed, its seed or its] weeds or their seeds or vegetative reproductive parts into any area designated pursuant to section 152-5 as free or reasonably free of [such] those noxious [weed] weeds; provided that [said] the introduction or transportation of those noxious weeds may be permitted for educational or research purposes when authorized by a permit issued by the department."

SECTION 4. Section 152-4, Hawaii Revised Statutes, is amended to read as follows:

**“§152-4 Designation of noxious weed.** The department may designate certain plant species as noxious weeds following the criteria and procedures [promulgated by regulations] established under section 152-2(1). The department shall publish and [shall] make available a list of noxious weeds to interested persons.”

SECTION 5. Section 152-5, Hawaii Revised Statutes, is amended to read as follows:

**“§152-5 Designation of areas declared free or reasonably free of noxious weeds.** The department may declare the entire State, an island, or a section of an island as free or reasonably free of a specific noxious weed. The department shall take necessary measures to restrict the introduction and establishment of specific noxious weeds in areas declared free or reasonably free of [such] those noxious weeds.”

SECTION 6. Section 152-6, Hawaii Revised Statutes, is amended to read as follows:

**“§152-6 Duties of the department; noxious weed control and eradication.** (a) The department [of agriculture] shall maintain a constant vigilance for incipient infestations of specific noxious weeds on islands declared reasonably free from [such] those weeds, and shall use [such] those procedures and methods to control or eradicate [such] the infestations of noxious weeds as are determined to be feasible and practicable.

(b) When the department determines that an infestation of a certain noxious weed exists on an island declared reasonably free from the weed, the department shall immediately conduct [such] investigations and surveys as are necessary to determine the feasibility and practicability of [control or eradication of] controlling or eradicating the infestation. The department may also conduct investigations and surveys to determine the feasibility and practicability of controlling widespread noxious weed infestations. The methods of control or eradication adopted by the department for any noxious weed infestation shall cause as little damage to crops and property as possible.

(c) Upon determining that control or eradication of an infestation is practicable and feasible, the department shall immediately serve notice, either oral or written, on both the landowner of the property and the occupant of the property on which the infestations exist. Written notice sent to the landowner's address last known to the department by [registered] certified mail, postage prepaid, return receipt requested, shall be deemed sufficient notice. The notice shall set forth all pertinent information with respect to the infestation and notify the landowner and the land occupant of the procedure and methods of control or eradication.

(d) Upon the department's notification pursuant to subsection (c) above, the department may enter into a cooperative agreement with the landowner and land occupier for the control or eradication of [said] the noxious weed infestation. The procedures and conditions for executing the cooperative agreement shall be in accordance with rules [and regulations] adopted under section 152-2(2).

(e) Upon the department's notification pursuant to subsection (c) above, the department may entirely undertake the eradication or control project when it has been determined that the owner, occupier, or lessee of the land on which the noxious weed infestation is located will not benefit materially or financially by the control or eradication of [said] the noxious weed; or when the noxious weed infestation is on [state owned] state-owned land not leased or under control of private interest.”

## ACT 92

SECTION 7. Section 152-7, Hawaii Revised Statutes, is amended to read as follows:

**“§152-7 Entry of private property for the control of any noxious weed.** Whenever any [member] representative of the department or [any member of] a county agency duly authorized to maintain a noxious weed control program determines that there is an infestation of noxious weed on private property and that [such] the infestation poses a threat to the agricultural, horticultural, or livestock industry of the county in which the property is situated, the department or county agency may enter [such] the property for the purpose of abating, destroying, removing, or controlling [such] the infestation; provided that the [county agency or] department or county agency shall give written notice of [such] its finding to the owner or occupant of [such] the property at least five days prior to entry. If [such] entry is refused, the [member] representative may make a complaint to the district court in the circuit in which [such] the land is located. The district court may thereupon issue a warrant, directed to any police officer of the circuit, commanding the police officer to take sufficient aid[,] and, [being] accompanied by a [member] representative of the department or county agency, as the case may be, [between the hours of sunrise and sunset to] during regular working hours and at other reasonable times, examine, abate, destroy, remove, or control[, under the directions of the member,] the infestation of noxious weeds[.] as directed by the representative.”

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved May 30, 1987.)