STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

HOUSE BILL HB2670 By: Adair

AS INTRODUCED

An Act relating to agriculture; amending Section 1, Chapter 204, O.S.L. 1994, as last amended by Section 1, Chapter 239, O.S.L. 1999 (2 O.S. Supp. 1999, Section 3-220), which relates to noxious weeds; clarifying language; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 1, Chapter 204, O.S.L. 1994, as last amended by Section 1, Chapter 239, O.S.L. 1999 (2 O.S. Supp. 1999, Section 3-220), is amended to read as follows:

Section 3-220. A. 1. The plants musk thistle (Carduus nutans L.), Scotch thistle (Onoprodum acanthium L.) and Canada thistle (Cirsium arvense) are hereby designated as noxious weeds. The Legislature finds that such thistles are a public nuisance in all counties across this state.

2. It shall be the duty of every landowner in each county to eradicate all Canada, musk, or Scotch thistles growing thereon so often in each and every year as shall be sufficient to prevent said thistles from going to seed.

B. 1. The boards of county commissioners of Adair, Craig, Cherokee, Delaware, Ottawa, Mayes, Roger Mills, McCurtain, Rogers, Sequoyah and Leflore Counties in which the musk, Scotch or Canada thistles are growing may cause such thistles within the county to be cut, mowed, sprayed or otherwise eradicated pursuant to the provisions of this subsection.

2. a. Upon written complaint or upon their own motion, the boards of county commissioners as specified by this

subsection shall submit such written complaint or motion to the State Department of Agriculture for inspection and a determination specifying the degree of infestation of thistles upon a specific site outlined in the complaint or motion.

b. Upon receipt of a written complaint or a motion for an inspection and determination of the degree of infestation upon the specific site, the Department shall inspect such site. Based upon rules promulgated by the State Board of Agriculture pursuant to this section, the Department shall notify the board of county commissioners the results of such inspection, the degree of infestation of thistles and whether such thistles should be treated, controlled or eradicated.

3. Upon receipt of an inspection report by the Department that the infestation of thistles on the site is of a degree requiring eradication, the board of county commissioners shall provide for the thistle eradication in accordance with the following procedures:

a. at least ten (10) days' notice shall be given to the owner of the property by certified mail with return receipt requested at the address shown by the current year's tax rolls in the county treasurer's office before the board of county commissioners holds a hearing or takes action. However, if the property owner cannot be located as shown by the return receipt, notice may be given by publication one time not less than ten (10) days prior to any hearing or action by the board of county commissioners,

b. the owner of the property may give written consent to the board of county commissioners authorizing the cutting, mowing, spraying or other method of eradication of the thistles. By giving said written

consent, the owner waives the right to a hearing by the county,

c. a hearing may be held by the board to determine whether:

(1) the defendant is the owner of the land, ~~and~~

(2) the plant so designated on the land is a musk thistle, Scotch thistle or a Canada thistle,

(3) the infestation of the thistle requires eradication, and

(4) the plant has not been sufficiently eradicated to prevent the plant from going to seed,

d. upon a finding that the defendant is the owner of the property and the plant is a musk, Scotch or Canada thistle, the agents of the county are granted the right of entry on the property for the cutting, mowing, spraying or other method of eradication of the thistles and performance of the necessary duties as a governmental function of the county,

e. the board of county commissioners shall determine the actual cost of such cutting, mowing, spraying or other method of eradication and any other expenses as may be necessary in connection therewith, including the cost of notice and mailing. The county clerk shall forward by certified mail with return receipt requested to the property owner at the address specified in paragraph 1 of this subsection a statement of such actual cost and demanding payment. If the cutting, mowing, spraying or other method of eradication is done by the county, the cost to the property owner for said eradication shall not exceed the actual cost of the labor, maintenance, and equipment required. If the cutting, mowing, spraying or other method of eradication is

done on a private contract basis, the contract shall be awarded to the lowest and best bidder, and

f. if payment is not made within thirty (30) days from the date of the mailing of the statement, the county clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located and the same shall be levied on the property and collected by the county treasurer as other taxes authorized by law. The cost and the interest thereon shall be a lien against the property from the date the cost is certified to the county treasurer, coequal with the lien of ad valorem taxes and all other taxes and special assessments, and the lien shall continue until the cost shall be fully paid. Upon receiving payment, if any, the county clerk shall forward to the county treasurer a notice of such payment and directing discharge of the lien.

C. The State Board of Agriculture shall:

1. Promulgate rules setting categories or degrees of infestation which would require specified treatment, control or eradication;

2. Include musk, Scotch and Canada thistles as prohibited noxious weed and weed seed pursuant to the Department's authority and responsibility under Article 8 of the Oklahoma Agricultural Code;

3. By November 1, 1999, and annually thereafter prior to the growing season of musk, Scotch and Canada thistles, complete a survey detailing the degree of infestation of such thistles across the state. The results of such surveys shall be reported to Oklahoma State University; and

4. In all counties of this state, publish a notice in newspapers of general circulation stating that musk, Scotch and Canada thistles are a public nuisance and that it is the duty of every landowner to treat, control or eradicate such thistles growing on any property owned by the landowner. The notice shall be published for at least two (2) consecutive weeks at the beginning of the cycle of growth of the musk, Scotch and Canada thistles and at such other times as deemed necessary by the Department to inform landowners of the provisions of this subsection. The notice shall also include:

a. information detailing the process by which an interested landowner may receive assistance pursuant to this subsection for the removal of thistles from infested property,

b. the telephone number of the State Department of Agriculture, and

c. a statement informing the landowner that failure to remove musk, Scotch and Canada thistles may subject the landowner to legal action requiring the treatment, control or eradication of such thistles.

D. Upon request of the landowner or the Department, the designated Oklahoma State University extension agent for a particular county shall evaluate or if there is no extension agent for a particular county, the Department shall inspect the type of thistle infestation, assess the nature and extent of the thistle infestation on the property of the landowner, and determine the most appropriate thistle treatment, control or eradication method available and proper for the type of thistle and location of the property.

E. It shall be the duty of the county commissioners of each county with regards to county roads and highways, and the Department of Transportation with regards to state roads and highways, to

remove any thistle infestation along the rights-of-way for the roads within the jurisdiction of each such county or Department.

F. 1. There is hereby created the Oklahoma Thistle Prevention, Control and Eradication Fund. The Oklahoma Thistle Prevention, Control and Eradication Fund shall be administered to control and eradicate musk, Scotch and Canada thistles.

2. The Oklahoma Thistle Prevention, Control and Eradication Fund shall consist of:

a. all monies received by the Department in the form of gifts, grants, reimbursements, appropriations, donations, industry contributions, federal funds, and such other monies specifically designated for thistle prevention, control and eradication, and

b. interest attributable to investment of money in the Oklahoma Thistle Prevention, Control and Eradication Fund.

3. Monies in the Oklahoma Thistle Prevention, Control and Eradication Fund shall only be expended for costs incurred by the State Department of Agriculture for the prevention, control and eradication of thistles including but not limited to the survey required by subsection C of this section.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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