

is standing or walking, nor shall it be unlawful for such licensee to permit any said person so standing or walking to consume liquor on such premises: PROVIDED HOWEVER, That the retail licensee of such a premises may at his discretion, promulgate a house rule that no person shall be served nor allowed to consume liquor unless said person is seated.

Sec. 3. Section 243, chapter 249, Laws of 1909 and RCW 66.44-.220 are each repealed.

Passed the House March 28, 1969
 Passed the Senate April 10, 1969
 Approved by the Governor April 18, 1969
 Filed in office of Secretary of State April 18, 1969

CHAPTER 113
 [Engrossed Substitute House Bill No. 91]
 WEED CONTROL

AN ACT Relating to the control of noxious weeds; adding a new chapter to Title 17 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this act shall have the following meanings:

(1) "Noxious weed" means any plant growing in a county which is determined by the state noxious weed control board to be injurious to crops, livestock, or other property and which is included for purpose of control on such county's noxious weed list.

(2) "Person" means any individual, partnership, corporation, firm, the state or any department, agency, or subdivision thereof, or any other entity.

(3) "Owner" means the person in actual control of property, whether such control is based on legal or equitable title or on any other interest entitling the holder to possession and, for purposes of liability, pursuant to section 17 or section 21 of this act, means the possessor of legal or equitable title or the possessor of an easement: PROVIDED, That when the possessor of an easement has the right to control or limit the growth of vegetation within the boundaries of an easement, only the possessor of such easement shall be deemed, for

the purpose of this act, an "owner" of the property within the boundaries of such easement.

(4) As pertains to the duty of an owner, the word "control" and the term "prevent the spread of noxious weeds" shall mean conforming to the standards of noxious weed control or prevention adopted by rule or regulation by an activated county noxious weed control board.

NEW SECTION. Sec. 2. (1) In each county of the state there is hereby created a noxious weed control board, which shall bear the name of the county within which it is located. The jurisdictional boundaries of each board shall be coextensive with the boundaries of the county within which it is located.

(2) Each noxious weed control board shall be inactive until activated pursuant to the provisions of section 4 of this act.

NEW SECTION. Sec. 3. There is hereby created a state noxious weed control board which shall be comprised of six members, three to be elected by the members of the various activated county noxious weed control boards. Three of the members of such board shall be residents of a county in which a county noxious weed control board has been activated and a member of said board, and be engaged in primary agricultural production at the time of their election and such qualification shall continue through their term of office. One such primary agricultural producer shall be elected from the west side of the state, the crest of the Cascades being the dividing line, and two from the east side of the state. The director of agriculture shall be a member of the board, and the director of the agricultural extension service shall be a nonvoting member of the board. The elected members of the board shall appoint one member of the board who may be an expert in the field of weed control. The term of office for all elected members and the appointed members of the board shall be three years from their date of election or appointment.

The director of agriculture shall provide for an election of the first members of the state noxious weed control board. Such election shall not take place sooner than six months nor later than twelve months after

one county noxious weed control board has been activated on the west side of the Cascade mountains and two such county noxious weed boards have been activated on the east side of the Cascade mountains. The first board members elected to the state noxious weed control board shall serve staggered terms as follows:

(1) The board member representing the west side of the state on the activated county noxious weed control board as primary agricultural producer, shall be appointed for a term of one year and shall be designated "Position No. 1".

(2) The two board members representing the east side of the state shall be appointed to terms of two and three years and shall be designated respectively as positions "No. 2" and "No. 3".

(3) The member of the board subsequently appointed by the elected members shall be appointed for a three year term and shall be designated "Position No. 4".

(4) The director of agriculture and the director of agricultural extension service shall serve so long as they are vested with their respective titular positions, and their positions shall be "No. 5" and "No. 6" respectively.

Elections for the elected members of the board shall be held thirty days prior to the expiration date of their respective terms.

Nominations and elections shall be by mail and conducted by the director of agriculture.

The board shall conduct its first meeting within thirty days after all its members have been elected. The board shall elect from its members a chairman and such other officers as may be necessary. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The members of the board shall serve without salary, but shall be compensated for the actual and necessary expenses incurred in the performance of their duties under this act.

NEW SECTION. Sec. 4. An inactive county noxious weed control board may be activated by any one of the following methods:

(1) Either upon a petition filed by one hundred land owners each owning one acre or more of land within the county or, on its own motion, the board of county commissioners shall hold a hearing to determine whether there is a need, due to a damaging infestation of noxious weeds, to activate the county noxious weed control board. If such a need is found to exist, then the board of county commissioners shall, in the manner provided by section 5 of this act, appoint five persons to hold seats on the county's noxious weed control board.

(2) If the county's noxious weed control board is not activated within one year following a hearing by the board of county commissioners to determine the need for activation, then upon the filing with the state noxious weed control board of a petition comprised either of the signatures of at least two hundred owners, each owning one acre of land or more within the county, or of the signatures of a majority of an adjacent county's noxious weed control board, the state board shall, within six months of the date of such filing, hold a hearing in the county to determine the need for activation. If a need for activation is found to exist, then the state board shall order the board of county commissioners to activate the county's noxious weed control board and to appoint members to such board in the manner provided by section 5 of this act.

NEW SECTION. Sec. 5. (1) Each activated county noxious weed control board shall consist of five voting members who shall, at the board's inception, be appointed by the board of county commissioners and elected thereafter by the property owners subject to the board. In appointing such voting members, the board of county commissioners shall divide the county into five sections, none of which shall overlap and each of which shall be of the same approximate area, and shall appoint a voting member from each section. At least four of such voting members shall be engaged in the primary production of agricultural products. There shall be one nonvoting member on such board who shall be the chief county extension agent or a county extension agent appointed by the chief county extension agent. Each voting

member of the board shall serve a term of two years, except that the board of county commissioners shall, when a board is first activated under this chapter, designate two voting members to serve terms of one year. The board members shall not receive a salary but shall be compensated for actual and necessary expenses incurred in the performance of their official duties.

(2) The elected members of the board shall represent the same districts designated by the county commissioners in appointing members to the board at its inception. Members of the board shall be elected at least thirty days prior to the expiration of any board member's term of office.

The nomination and election of elected board members shall be conducted by the board at a public meeting held in the section where board memberships are about to expire. Elections at such meetings shall be by secret ballot, cast by the landowners residing in the section where an election for a board member is being conducted. The nominee receiving the majority of votes cast shall be deemed elected, and if there is only one nomination, said nominee shall be deemed elected unanimously.

Notice of such nomination and election meeting shall be mailed to all affected landowners thirty days prior to such meeting. Notice shall be published at least twice in a weekly or daily newspaper of general circulation in said section.

(3) Within thirty days after all the members have been appointed, the board shall conduct its first meeting. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chairman and such other officers as may be necessary.

NEW SECTION. Sec. 6. (1) Each activated county noxious weed control board may employ a weed inspector whose duties shall be fixed by the board but which shall include inspecting land to determine the presence of noxious weeds. Each board may purchase, rent or lease

such equipment, facilities or products and may hire such additional persons as it deems necessary for the administration of the county's noxious weed control program.

(2) Each activated county noxious weed control board shall have the power to adopt such rules and regulations, subject to notice and hearing as provided in chapter 42.32 RCW as now or hereafter amended, as are necessary for an effective county weed control or eradication program.

NEW SECTION. Sec. 7. In addition to the powers conferred on the state noxious weed control board under other provisions of this act, it shall have power to:

(1) Require the board of county commissioners or the noxious weed control board of any county to report to it concerning the presence of noxious weeds and measures, if any, taken or planned for the control thereof;

(2) Employ a state weed supervisor who shall act as executive secretary of the board and who shall disseminate information relating to noxious weeds to county noxious weed control boards and who shall work to coordinate the efforts of the various county and regional noxious weed control boards;

(3) Do such things as may be necessary and incidental to the administration of its functions pursuant to this act.

NEW SECTION. Sec. 8. The state noxious weed control board shall each year or more often, following a hearing, adopt a list comprising the names of those plants which it finds to be injurious to crops, livestock or other property. At such hearing any county noxious weed control board may request the inclusion of any plant to the list to be adopted by the state board.

Such list when adopted shall be designated as the "proposed noxious weed list", and the state board shall send a copy of the same to each activated county noxious weed control board, to each regional noxious weed control board, and to the board of county commissioners of each county with an inactive noxious weed control board.

NEW SECTION. Sec. 9. Each county noxious weed control board shall, within thirty days of the receipt of the proposed noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the proposed list which it finds necessary to be controlled in the county. The weeds thus selected shall be classified within this county as noxious weeds, and such weeds shall comprise the county noxious weed list.

NEW SECTION. Sec. 10. Where any of the following occur, the state noxious weed control board may, following a hearing, order any county noxious weed control board to include a proposed noxious weed from the state board's list in the county's noxious weed list:

(1) Where the state noxious weed control board receives a petition from at least one hundred land owners owning one acre or more of land within the county requesting that such weed be listed.

(2) Where the state noxious weed control board receives a request for such inclusion from an adjacent county's noxious weed control board, which board has included such weed in the county list and which board alleges that its noxious weed control program is being hampered by the failure to include such weed on the county's noxious weed list.

NEW SECTION. Sec. 11. A regional noxious weed control board comprising the area of two or more counties may be created as follows:

Either each board of county commissioners or each noxious weed control board of two or more counties may, upon a determination that the purpose of this act will be served by the creation of a regional noxious weed control board, adopt a resolution providing for a limited merger of the functions of their respective counties noxious weed control boards. Such resolution shall become effective only when a similar resolution is adopted by the other county or counties comprising the proposed regional board.

NEW SECTION. Sec. 12. In any case where a regional noxious weed control board is created, the county noxious weed control board comprising the regional board shall still remain in existence and

shall retain all powers and duties provided for such boards under this act except for the powers and duties described in section 9 of this act.

The regional noxious weed control board shall be comprised of the voting members and the nonvoting members of the component counties noxious weed control boards who shall, respectively, be the voting and nonvoting members of the regional board. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect a chairman from its members and such other officers as may be necessary. Members of the regional board shall serve without salary.

NEW SECTION. Sec. 13. The powers and duties of a regional noxious weed control board are as follows:

(1) The regional board shall, within forty days of the receipt of the proposed noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the proposed list which it finds necessary to be controlled in the region. The weeds thus selected shall comprise the county noxious weed list of each county in the region.

(2) The regional board shall render such advice as may be necessary to coordinate the noxious weed control programs of the counties within the region and the regional board shall adopt a regional plan for the control of noxious weeds.

NEW SECTION. Sec. 14. Except as is provided under section 15 of this act, every owner shall perform, or cause to be performed such acts as may be necessary to control and to prevent the spread of noxious weeds from his property.

NEW SECTION. Sec. 15. (1) In regard to any land which is classified by the county noxious weed control board as not being used for agricultural purposes, the owner thereof shall have the following limited duty to control noxious weeds present on such land:

(a) The owner shall control and prevent the spread of noxious

weeds on any portion of such land which is within two hundred feet of land used for agricultural purposes.

(b) In any case of a serious infestation of a particular noxious weed, which infestation exists within the two hundred foot strip of land described in paragraph (a) of subsection (1) of this section, and which extends beyond said two hundred foot strip of land, the county noxious weed control board may require that the owner of such two hundred foot strip of land take such measures, both within said two hundred foot strip of land as well as on other land owned by said owner contiguous to said two hundred foot strip of land on which such serious infestation has spread, as are necessary to control and prevent the spread of such particular noxious weed.

For purposes of this subsection, land shall not be classified as or considered as being used for agricultural purposes when the sole reason for classifying or considering it as such is that it is being used for the growing, planting or harvesting of trees for timber.

(2) In regard to any land which is classified by the county noxious weed control board as scab or range land, the board may limit the duty of the owner thereof to control noxious weeds present on such land. The board may share the cost of controlling such weeds, may provide for a buffer strip around the perimeter of such land or may take any other reasonable measures to control noxious weeds on such land at an equitable cost to the owner. The board shall classify as range or scab land all that land within the county which the board finds to be of a relatively low value per acre, and on which the cost of controlling all of the noxious weeds present would be disproportionately high when compared to the value per acre of such land.

NEW SECTION. Sec. 16. Any authorized agent or employee of the county noxious weed control board or of the state noxious weed control board or of the department of agriculture may enter upon any property for the purpose of administering this act and any power ex-

ercisable pursuant thereto, including the taking of specimens of weeds or other materials, general inspection, and the performance of eradication or control work. Such entry may be made without the consent of the owner: PROVIDED, That the consent of the owner of any land shall be obtained where, due to fire danger, the owner or any state agency has either closed the land to public entry: PROVIDED FURTHER, That prior to carrying out the purposes for which the entry is made, the official making such entry or someone in his behalf, shall have first made a reasonable attempt to notify the owner of the property as to the purpose and need for the entry: PROVIDED FURTHER, That civil liability for negligence shall lie in any case in which entry and any of the activities connected therewith are not undertaken with reasonable care.

NEW SECTION. Sec. 17. (1) Whenever the county noxious weed control board finds that noxious weeds are present on any parcel of land, and that the owner thereof is not taking prompt and sufficient action to control the same, pursuant to the provisions of section 14 of this act, it shall notify such owner that a violation of this act exists. Such notice shall be in writing, identify the noxious weeds found to be present, order prompt control action, and specify the time within which the prescribed action must be taken.

(2) If the owner does not take action to control the noxious weeds in accordance with the notice, the county board shall control them, or cause their being controlled, at the expense of the owner. The amount of such expense shall constitute a lien against the property and may be enforced by proceedings on such lien. The owner shall be liable for payment of the expense, and nothing in this act shall be construed to prevent collection of any judgment on account thereof by any means available pursuant to law, in substitution for enforcement of the lien.

(3) The county auditor shall record in his office any lien created under this section, and any such lien shall bear interest at the rate of eight percent per annum from the date on which the coun-

ty noxious weed control board approves the amount expended in controlling such weeds.

NEW SECTION. Sec. 18. Any owner, upon request pursuant to the rules and regulation of the county noxious weed control board, shall be entitled to a hearing before the board on any charge or cost for which such owner is alleged to be liable pursuant to section 17 or 21 of this act. The board shall send notice by certified mail, to each owner residing within the county at his last known address, as to any such charge or cost and as to his right of a hearing. If the owner does not reside within the county, such notice shall be sent by certified mail. Any determination or final action by the board shall be subject to judicial review by a proceeding in the superior court in the county in which the property is located, and such court shall have original jurisdiction to determine any suit brought by the owner to recover damages allegedly suffered on account of control work negligently performed: PROVIDED, That no stay or injunction shall lie to delay any such control work subsequent to notice given pursuant to section 16 of this act or pursuant to an order under section 21 of this act.

NEW SECTION. Sec. 19. Each activated county noxious weed control board shall cause to be published in at least one newspaper of general circulation within its area a general notice during the month of March and at such other times as may be appropriate. Such notice shall direct attention to the need for noxious weed control and shall give such other information with respect thereto as may be appropriate, or shall indicate where such information may be secured. In addition to the general notice required hereby, the county noxious weed control board may use such media for the dissemination of information to the public as may be calculated to bring the need for noxious weed control to the attention of owners. The board may consult with individual owners concerning their problems of noxious weed control and may provide them with information and advice, including giving specific instructions and methods when and how certain named weeds are to be controlled. Such methods may include definite systems of tillage, cropping, management, and use of livestock. Publication of a no-

tice as required by this section shall not be a condition precedent to the enforcement of this act.

NEW SECTION. Sec. 20. (1) In the case of land owned by the United States on which control measures of a type and extent required pursuant to this act have not been taken, the county noxious weed control board, with the approval of both the director of the department of agriculture and the appropriate federal agency, may perform such work. The cost thereof, if not paid by the agency managing the land, shall be a state charge and may be paid from any funds available to the department of agriculture for the administration of this act.

(2) The county noxious weed control board is authorized to enter into any reasonable agreement with the appropriate authorities for the control of noxious weeds on Indian lands.

NEW SECTION. Sec. 21. (1) Whenever the county noxious weed control board finds that a parcel of land is so seriously infested with noxious weeds that control measures cannot be undertaken thereon without quarantining the land and restricting or denying access thereto or use thereof, the board, with the approval of the director of the department of agriculture, may issue an order for such quarantine and restriction or denial of access or use. Upon issuance of the order, the board promptly shall commence necessary control measures and shall prosecute them with due diligence.

(2) An order of quarantine shall be served, by any method sufficient for the service of civil process, on all persons known to qualify as owners of the land within the meaning of this act.

(3) The expense of control work undertaken pursuant to this section, and of any quarantine in connection therewith, shall be borne as follows: One-third by the owner, one-third by the county noxious weed control board, and one-third by the department of agriculture.

NEW SECTION. Sec. 22. The state noxious weed control board may petition the director, pursuant to the provisions of RCW 34.04-.060, to adopt, amend, change or repeal rules necessary to carry out

the purposes of this act.

NEW SECTION. Sec. 23. Any owner knowing of the existence of any noxious weeds on his land who fails to control such weeds in accordance with this act and rules and regulations in force pursuant thereto; any person who enters upon any land in violation of an order in force pursuant to section 21 of this act; any person who prevents or threatens to prevent entry upon land as authorized in section 16 of this act; or any person who interferes with the carrying out of the provisions of this act, shall be subject to a fine not to exceed one hundred dollars on account of each violation.

NEW SECTION. Sec. 24. (1) The activated county weed control boards of each county shall annually submit a budget to the board of county commissioners for the operating cost of the county's weed program for the ensuing fiscal year. Control of weeds are a special benefit to the lands within any such district. The board of county commissioners may in lieu of a tax, levy an assessment against the land for this purpose. The county weed control board shall classify the lands into suitable classifications, and assess for each class such an amount as shall seem just, but which shall be uniform per acre in its respective class. The findings by the board of such special benefits, when so declared by resolution and spread upon the minutes of the board shall be conclusive that the same is of special benefit to the lands within the district.

(2) In addition, the board of county commissioners may appropriate money from the county general fund necessary for the administration of the county noxious weed control program. In addition the board of county commissioners may make emergency appropriations as it deems necessary for the implementation of this act.

NEW SECTION. Sec. 25. The board of county commissioners of any county with an activated noxious weed control board may apply to the state noxious weed control board for state financial aid in an amount not to exceed fifty percent of the locally funded portion of the annual operating cost of such noxious weed control board. Any such aid shall be expended from the general fund from such appropriation as the legislature may pro-

vide for this purpose.

NEW SECTION. Sec. 26. Any weed district formed under chapter 17.04 or 17.06 RCW prior to the enactment of this act, shall continue to operate under the provisions of the chapter under which it was formed: PROVIDED, That if ten percent of the landowners subject to any such weed district, and the county weed board upon its own motion, petition the county commissioners for a dissolution of the weed district, the county commissioners shall provide for an election to be conducted in the same manner as required for the election of directors under the provisions of chapter 17.04 RCW, to determine by majority vote of those casting votes, if such weed district shall continue to operate under the act it was formed. The land area of any dissolved weed district shall forthwith become subject to the provisions of this act.

NEW SECTION. Sec. 27. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 28. The administrative powers granted under this act to the director of the department of agriculture and to the state noxious weed control board shall be exercised in conformity with the provisions of the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended. The use of any substance to control noxious weeds shall be subject to the provisions of the Water Pollution Control Act, chapter 90.48 RCW, as now or hereafter amended.

NEW SECTION. Sec. 29. Sections 1 through 28 of this act shall constitute a new chapter in Title 17 RCW.

Passed the House March 14, 1969
Passed the Senate April 10, 1969
Approved by the Governor April 18, 1969
Filed in office of Secretary of State April 18, 1969

CHAPTER 114
[Substitute House Bill No. 415]
LOCAL HEALTH OFFICERS--
QUALIFICATIONS--APPOINTMENT

AN ACT Relating to public health; creating new sections; and amending section 9, chapter 51, Laws of 1967 ex.sess. and RCW 70.05.050.