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States' Noxious Weed Statutes and Regulations:

South Dakota



This material is based upon work supported by the National Agricultural Library,
Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication
States' Noxious Weed Statutes: South Dakota

South Dakota Codified Laws
Title 5 Public Property, Purchases and Contracts
Chapter 5-5 Agricultural and Grazing Leases of School and Public Lands

5-5-18. Agricultural lessee to clear weeds and pests

Any person leasing school or endowment lands for agricultural purposes shall destroy all noxious weeds and pests on any lands so leased pursuant to chapter 38-22.

Title 39 Agriculture and Horticulture
Chapter 38-22 Weed and Pest Control

38-22-1.2. Definitions

Terms used in this chapter mean:

- (1) "Agricultural chemical," any material used to control or eradicate weeds or pests;
- (2) "Board," any county weed and pest board;
- (3) "Board member area," a geographical area within a county from which a member of the board is appointed;
- (4) "Commission," the South Dakota Weed and Pest Control Commission;
- (5) "Control," the prevention or limiting of the growth, spread, or development of weeds or pests;
- (6) "Department," the State Department of Agriculture and Natural Resources;
- (7) "Pest," any rodent, bird, other than a game bird or a state or federally protected bird, insect, or nematode which the commission has found to be detrimental to the production of crop or livestock or to the welfare of persons residing within the state. Prairie dogs are included in the definition of a pest if all of the following conditions apply:
 - (a) Sylvatic plague has been reported in any prairie dog colony east of the Rocky Mountains;
 - (b) The South Dakota Department of Game, Fish and Parks has determined that the population of prairie dogs within the state, including tribal lands, exceeds the one hundred forty-five thousand acre level;
 - (c) Prairie dogs are colonizing on lands where the prairie dogs are unwanted by the owner of the impacted land;
 - (d) Lands adjacent to the impacted owner's land do not have a maintained one-mile buffer zone, or other mutually agreed border, in which prairie dog control is applied; and

- (i) The owner of the impacted land has filed a written complaint of encroachment requesting mitigation or abatement with the South Dakota Department of Agriculture and Natural Resources and served a copy upon the owner of adjoining lands from which the prairie dogs are encroaching; or
- (ii) The owner of the impacted land has filed a written complaint of the encroachment with the county weed and pest board;
- (8) "Pesticide," a substance or mixture of substances for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulatory, defoliant, or desiccant or any substance or mixture of substances intended to be used as a spray adjuvant;
- (9) "Secretary," the state secretary of the Department of Agriculture and Natural Resources;
- (10) "Supervisor," any person appointed or employed by a board for the purpose of carrying out the provisions of this chapter;
- (11) "Weed," any plant which the commission has found to be detrimental to the production of crops or livestock or to the welfare of persons residing within the state.

38-22-9. Determination and publication of lists of state weeds and pests

The South Dakota Weed and Pest Control Commission, pursuant to rules promulgated pursuant to the provisions of chapter 1-26, may determine which plants and animals shall be considered to be weeds and pests and shall from time to time prepare, and the Department of Agriculture shall publish, a list of state weeds and pests.

38-22-11. Enforcement of commission rules, regulations, processes, subpoenas, and orders.

The rules, processes, subpoenas, and orders of the South Dakota Weed and Pest Control Commission may be enforced by any court of competent jurisdiction.

38-22-11.1. Promulgation of rules.

The commission may promulgate rules pursuant to chapter 1-26:

- (1) To provide procedures for enforcement of weed and pest control;
- (2) To provide for records and reports;
- (3) To prescribe county weed and pest board activities;
- (4) To prescribe what constitutes a weed or pest;
- (5) To prescribe when an infestation constitutes a menace; and

(6) To establish standards for application, economic feasibility, technical feasibility, reporting, and evaluation of weed and pest control projects.

38-22-12. Administration of state weed and pest program

The state weed and pest coordinator shall administer the state weed and pest program formulated by the South Dakota Weed and Pest Control Commission.

38-22-23.15. Responsibility for control costs on state lands

The costs of controlling weeds and pests on lands owned or supervised by the state shall be paid out of funds appropriated to the state agency that has responsibility for those lands.

38-22-16. Infested land declared public nuisance--Protective operations by secretary.

If any owner of weed or pest infested land fails to rid the land of such infestation and the secretary of agriculture and natural resources finds that such infestation is a menace to neighboring lands or to the state or its people he may declare such infested land to constitute a public nuisance and may enter such infested areas and perform such protective operations as may be necessary.

38-22-16.1. Weeds or pests in any amount considered infestation.

The existence of weeds or pests in any amount or quantity upon land is sufficient to determine that such land is infested.

38-22-16.2. Property owner who allows spread of infestation of noxious weeds or mountain pine beetle responsible for remedy

If an infestation of noxious weeds or an infestation of mountain pine beetle spreads to adjacent private or public land, the person or entity owning the property from which the infestation spread is responsible for remedying the problems caused by the infestation, to the extent that the person or entity is responsible for allowing the infestation to spread to the adjacent private or public land.

38-22-17. Notice to owner of infested land--Service--Contents.

No operations to rid lands of infestation may be undertaken pursuant to § 38-22-16 until notice of the declaration that such infested land constitutes a nuisance has been given to the owner. Notice shall be given by personal service upon the owner, if a resident of this state, a copy of the declaration filed in the office of the county auditor, in the manner that summons in civil actions are served, or by personal service upon the person in actual possession of the premises, together with a copy of the declaration provided for in § 38-22-16, that unless the owner complies with the orders of the secretary of agriculture and natural resources within such time as the declaration states, which may be not less than three days nor more than fifteen days from the date of service, as specified in the notice, that protective operations shall be performed by the secretary and, if the owner does not pay the costs of such operations prior to the first day of November in the year in which the operations are performed, the cost shall become a lien against the lands of the owner.

38-22-17.1. Noncompliance with orders as misdemeanor

It is a Class 2 misdemeanor for any owner, occupant, or other person who maintains or exercises control or management over land to fail to comply with any order of the secretary of agriculture or the South Dakota Weed and Pest Control Commission to effectuate the purposes in this chapter.

38-22-17.2. Intervention on federal land by State Weed and Pest Control Commission.

If any agency of the United States fails or refuses to suppress weeds or pests on any land owned or controlled by such agency after receiving notice of such infestation by the county weed and pest board pursuant to this chapter, the South Dakota Weed and Pest Control Commission, at the request of the county board, shall intervene on its behalf. The attorney general shall provide such legal counsel as the South Dakota Weed and Pest Control Commission may require to resolve any such dispute.

38-22-18. Service of notice on nonresident owner of infested land

If the owner of infested land is not a resident of South Dakota, service of notice may be made by posting such notice at the courthouse in the county in which the land is situated, and by mailing to the last known address of the owner. Service is deemed complete five days after the date of the posting and mailing of the notices, which shall be evidenced by the affidavit of a person qualified to serve civil process in this state to be filed with the county auditor. However personal service upon the owner outside of this state is sufficient.

38-22-19. Police powers of state personnel in enforcement of chapter.

In the performance of their duties, pursuant to this chapter, the South Dakota Weed and Pest Control Commission, the secretary of agriculture and natural resources, his assistants, inspectors, agents, and employees are vested with police powers.

38-22-20. Entry by state personnel not deemed trespass--Crop damage not assessed

The entrance by an agent or employee of the secretary of agriculture and natural resources, county or supervisor, upon property, in performing his duties, pursuant to this chapter, does not constitute trespass, nor may damage be assessed against the state, the secretary, his agents or employees, the county, or any supervisor doing weed or pest control work.

38-22-21. Certification to county auditor of cost of protective operations on infested land--Collection as taxes.

Upon completion of protective operations, the secretary of agriculture and natural resources shall certify to the county auditor the expenses for the performance of the protective operations, and the county auditor shall issue a warrant to the party entitled to payment of the costs of such protective operations from funds appropriated for that purpose. The owner of such infested land is indebted to the county for such expense actually incurred, and if not paid on or before the first day of November following such operations, such county auditor shall extend the amount of such indebtedness on the tax list against the infested land and all land owned by such owner contiguous thereto, in a separate column headed "weed and pest control" and the amount shall be collected as other taxes are collected.

38-22-22. Responsibility for cost of operations on publicly owned land

The responsibility for and the cost of controlling and eradicating weeds and pests on all lands or highways owned or supervised by a state agency or subdivision shall be upon the state agency or subdivision supervising such lands or highways, and paid out of funds appropriated to its use.

38-22-24. Expenditure of county funds

The board of county commissioners may, based upon the budget submitted by the county weed and pest board, appropriate and expend money from the general fund of the county for the purpose of this chapter.

38-22-26. Organization for weed and pest control prerequisite to appropriation.

No appropriations may be made pursuant to § 38-22-24 until the county has been organized for weed and pest control pursuant to this chapter.

38-22-30. Prosecution of violations--Collection and disposition of forfeitures and fines

The state's attorney shall, upon complaint, prosecute any person who violates any provision of this chapter and enforce the collection of forfeitures and fines. Such forfeitures or fines shall be deposited in the general fund of the county in which the prosecution is brought.

38-22-31. Prosecutions under drug laws not precluded

The penalties provided in this chapter are not intended, nor may they be used, to prevent prosecution for the violation of any of the provisions of chapter 34-20B or chapter 39-15.

**38-22-32. Department assisting boards--Agreements with federal agencies--
Employment and purchases authorized**

The Department of Agriculture and Natural Resources may assist, advise, and coordinate the county weed and pest boards. The secretary of agriculture and natural resources may enter into cooperative agreements with any state or federal agency to accomplish the purposes of this chapter, and he may employ such assistance and purchase such supplies and equipment as may be necessary.

38-22-33. Transportation of plant products containing weed seed as misdemeanor

It is a Class 2 misdemeanor for any person to transport hay, livestock feeds or other plant products containing weed seed in such a manner as may constitute a substantial risk of contaminating fields or other lands.

**38-22-34. Levy for weed and pest control programs in community--Administration
by board**

With the approval of two-thirds of the landowners, a community may petition the county to assess a special levy to be used for weed and pest control programs in that community. For the purposes of this section, a community is any township, a natural or

artificial geographic area, or a subdivision of a board member area as designated by the county weed and pest board and represented by a community representative. Any such program for the control of weeds and pests which is funded by a special levy shall be administered through the county weed and pest board.

38-22-35. Weed and pest control fund

All funds collected pursuant to § 38-22-36 shall be deposited with the state treasurer in a special fund known as the "weed and pest control fund."

38-22-36. Funds for weed and pest control fund

The commission may accept gifts, grants, contracts, or other funds designated for weed and pest management. Such funds shall be deposited in the weed and pest control fund and may be expended pursuant to § 38-22-38.

38-22-38. Expenditure of weed and pest control funds

The commission may expend weed and pest control funds through grants or contracts to weed and pest control boards, governmental agencies, or other entities it considers appropriate for weed and pest control projects for the following:

- (1) Employment of a new and innovative weed and pest control project or the development, implementation, or demonstration of any weed and pest control project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. Such expenditures shall be on a cost-share basis with such organizations;
- (2) Weed and pest control cost-share programs with county weed and pest boards;
- (3) Special grants to county weed and pest control boards to eradicate or contain significant weeds or pests newly introduced into the county. These grants may be issued without matching funds from the board;
- (4) Assist county weed and pest boards in purchasing pesticides and application equipment and hiring labor necessary to protect against expansion of noxious weeds and declared pests;
- (5) Support multi-county weed and pest control and eradication efforts;
- (6) Promote landowner responsibility to control noxious weeds and pests in South Dakota;

(7) Support educational and research efforts to find new and better ways of controlling noxious weeds and pests.

A project is eligible to receive funds only if the county in which the project occurs has funded its own weed and pest program. The commission may also expend funds to pay for the costs of administering the weed and pest control fund not to exceed three percent of the allowable expenditure for each fiscal year and for administrative expenses incurred by the commission.

Administrative Rules of South Dakota

Department of Agriculture

Article 12:62 Weed and Pest Control

Chapter 12:62:02 Definitions

12:62:02:01. Definitions. Words defined in SDCL 38-22-1.2 have the same meaning when used in this article. In addition, terms used in this article have the following meaning:

(1) "Community," a township, a natural or artificial geographical area, or a subdivision of a board member area as designated by the board and represented by a community representative;

(2) "Declared pest," a pest which the commission has designated as sufficiently detrimental to the state to warrant enforcement of control measures;

(3) "Locally declared pest," a pest which the commission has designated in one or more counties for enforcement of control measures;

(4) "Locally noxious weed," a noxious weed which the commission has designated in one or more counties for enforcement of control measures;

(5) "Noxious weed," a weed which the commission has designated as sufficiently detrimental to the state to warrant enforcement of control measures.

Chapter 12:62:03 Weeds and Pests

12:62:03:01. Characteristics of noxious weed. A noxious weed possesses the following characteristics:

- (1) The weed is a perennial;
- (2) The weed is capable of unique and rapid spreading and growth under adverse conditions;
- (3) The weed is not controllable without special preventive chemical, mechanical, biological, and cultural practices;
- (4) The weed is capable of materially reducing the production of crops or livestock;
- (5) The weed is capable of decreasing the value of the land; and
- (6) The weed is not native to the state.

12:62:03:01.01. Characteristics of declared pest. A declared pest possesses the following characteristics:

- (1) The pest is capable of spreading rapidly by natural means in a previously uninfested area;
- (2) The pest is not controllable without special preventive, chemical, biological, and cultural practices;
- (3) The pest is capable of materially reducing the production of crops and livestock.

12:62:03:01.06. Statewide noxious weeds. The following weeds are declared to be noxious statewide:

- (1) Absinth wormwood (*Artemisia absinthium*);
- (2) Canada thistle (*Cirsium arvense*);
- (3) Hoary cress (*Lepidium draba*);
- (4) Leafy spurge (*Euphorbia esula*);
- (5) Perennial sow thistle (*Sonchus arvensis*);
- (6) Purple loosestrife (*Lythrum salicaria*); and
- (7) Salt Cedar (*Tamarix ramosissima*).

12:62:03:01.07. List of weeds and pests for use in declaring locally noxious weeds or declared pests. A county board may select weeds or pests from the following list or may request declaration of other weeds that meet the requirements of §§ 12:62:07:01 and 12:62:07:02, when the board requests from the commission a declaration of locally noxious weeds or a designation of pests under § 12:62:07:03:

- (1) Black henbane (*Hyoscyamus niger* L.);
- (2) Bull thistle (*Cirsium vulgare*);
- (3) Chicory (*Cichorium intybus*);
- (4) Common burdock(*Arctium minus*);
- (5) Common mullein (*Verbascum thapsus*);
- (6) Common tansy (*Tanacetum vulgare*);
- (7) Dalmation toadflax (*Linaria dalmatica*);
- (8) Diffuse knapweed (*Centaurea diffusa*);
- (9) Field bindweed (*Convolvulus arvensis*);
- (10) Flowering Rush (*Butomus umbellatus* L.);
- (11) Giant Knotweed (*Polygonum sachalinense*);
- (12) Houndstongue (*Cynoglossum officinale*);
- (13) Musk and plumeless thistles (*Carduus nutans* and *Carduus acanthoides*);
- (14) Oxeye Daisy (*Chrysanthemum leucanthemu*);
- (15) Palmer Amaranth (*Amaranthus palmeri*);
- (16) Phragmites (*Phragmites australis* subsp. *Australis*; *Haplotyme M*);
- (17) Poison hemlock (*Conium maculatum*);
- (18) Puncturevine (*Tribulus terrestris*);
- (19) Scotch thistle (*Onopordum acanthium*);
- (20) Spotted knapweed (*Centaurea maculosa*);
- (21) St. Johnswort (*Hypericum perforatum*);
- (22) Sulfur Cinquefoil (*Potentilla recta* L.);
- (23) White Horehound (*Marrubium vulgare*);
- (24) Yellow toadflax (*Linaria vulgaris*);
- (25) Japanese Beetle (*Popillia japonica*); and
- (26) Mountain Pine Beetle (*Dendroctonus ponderosae*).

12:62:03:06. Additions to and deletions from noxious weed and declared pest lists. The commission shall evaluate additions and deletions to the noxious weed and declared pest lists at its annual meeting. Commissioners shall consider all requests for changes to the noxious weed and declared pest lists.

12:62:03:07. Emergency designation of a noxious weed or declared pest. With the concurrence of the chair of the commission, the secretary may make an emergency designation of a noxious weed or declared pest. The emergency designation remains in effect for 180 days.

Chapter 12:62:07 Designation of Locally Noxious Weeds and Declared Pests

12:62:07:01. Characteristics of locally noxious weed. The commission may designate as a locally noxious weed a weed possessing the following characteristics:

- (1) The weed is biennial, perennial, or a pernicious annual;
- (2) The weed is capable of spreading rapidly;
- (3) The weed is not controllable without special preventive chemical, mechanical, biological, and cultural practices;
- (4) The weed is capable of materially reducing the production of crops or livestock;
- (5) The weed is capable of decreasing the value of the land.

12:62:07:03. Request for designation as locally noxious weed or declared pest. Each board may request the commission to designate not more than eight species of weed or pest as locally noxious or declared for the county. Not more than eight species may be designated as locally noxious or declared by the commission at any one time.

12:62:07:04. Weed and pest designated locally noxious weed or declared pest for five years. Locally noxious weeds and declared pests retain their designation for five years, unless removed from the list by the commission.

12:62:07:05. Emergency designation of locally noxious weed or declared pest. The secretary may with the concurrence of the chair of the commission make an emergency designation of a noxious weed or locally declared pest. The pest shall remain a noxious weed or a locally declared pest for 180 days.

Chapter 12:62:09 County Weed and Pest Boards

12:62:09:01. Board to direct, develop, present, and adopt weed and pest control program. Each board shall direct, develop, present, and adopt a program in cooperation with state and federal agencies for the control of noxious weeds and declared pests.

12:62:09:01.01. Number and time of board meetings. The board shall conduct at least four paid meetings a year. The annual meeting shall be held before March 31. The annual inspection shall be made after July 1.

Chapter 12:62:11 Enforcement Procedures

12:62:11:05. Action of secretary in cases referred by board. The secretary shall review board requests for assistance with noncompliance cases and may accept or reject them. The decision to accept or reject shall be based on the following criteria:

- (1) Control efforts of the landowner or operator;
- (2) Control and enforcement efforts on adjoining land;
- (3) Local board efforts and results;
- (4) An evaluation of the menace to neighboring lands of the infestation; and
- (5) Board publication of a legal notice of the noxious weeds, declared pests, and commission approved locally noxious weeds and locally declared pests before April 1 of each year or at least 30 days before the filing of a request for assistance.

All requests for assistance shall be made on a form approved by the commission. Once accepted, a case will remain under departmental jurisdiction until released by the department.

Chapter 12:62:12 Records and Reports

12:62:12:01. Submission and completion dates of board reports. The following are the submission and completion dates of reports required of the board:

- (1) The yearly report shall be submitted on a form approved by the commission to the state weed and pest coordinator by January 31;
- (2) The report of the annual inspection shall be submitted on a form approved by the commission to the state weed and pest coordinator by November 1. The report shall be made available to the public by November 1;
- (3) The program for the control of noxious weeds and declared pests shall be submitted on a form approved by the commission to the state weed and pest coordinator by April 1.

12:62:12:04. Minutes of board meetings. The board shall submit minutes to the state weed and pest coordinator within 10 days after each meeting.