

LEGISLATIVE BILL 157

Approved by the Governor March 26, 1975

Introduced by Public Health and Welfare Committee,
Kennedy, 21, Chmn.; Moylan, 6; Cavanaugh, 9;
R. Maresh, 32; R. Lewis, 38; Kelly, 35

AN ACT to amend sections 71-3501 to 71-3511, 71-3513, 71-3515, and 71-3516, Reissue Revised Statutes of Nebraska, 1943, relating to public health and welfare; to define terms; to change annual reporting and registration requirements; to require licensing of all radioactive material; to provide a radiation control agency; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 71-3501, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3501. It is the policy of the State of Nebraska in furtherance of its responsibility to protect the public health, safety and welfare: (1) To institute and maintain a regulatory program for sources of ~~ionizing~~ radiation so as to provide for (a) compatibility with the standards and regulatory programs of the federal government, (b) an a single effective system of regulation within the state, and (c) a system consonant insofar as possible with those of other states; and (2) to institute and maintain a program to permit development and utilization of sources of ~~ionizing~~ radiation for peaceful purposes consistent with the health, safety and welfare of the public.

Sec. 2. That section 71-3502, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3502. It is the purpose of sections 71-3501 to 71-3519 to effectuate the policies set forth in section 71-3501 by providing for:

(1) A program of effective regulation of sources of ~~ionizing~~ radiation for the protection of the public health, safety and welfare;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and

regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to sources of ionizing radiation; and

(4) A program to permit maximum utilization of sources of ionizing radiation consistent with the health, safety and welfare of the public.

Sec. 3. That section 71-3503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3503. As used in sections 71-3501 to 71-3519, unless the context otherwise requires:

(1) ~~Ionizing radiation shall mean gamma rays, X-rays, alpha and beta particles, high speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves, or visible, infrared, or ultraviolet light; Radiation shall mean (a) ionizing radiation including gamma rays, X-rays, alpha and beta particles, and other atomic or nuclear particles or rays, (b) any electromagnetic radiation which can be generated during the operations of electronic products to such energy density levels as to present a biological hazard to the public health and safety, and (c) any sonic, ultrasonic, or infrasonic waves which are emitted from an electronic product as a result of the operation of an electronic circuit in such product and to such energy density levels as to present a biological hazard to the public health and safety;~~

(2) Radioactive material shall mean any material, solid, liquid or gas, that emits ionizing radiation spontaneously, whether occurring naturally or produced artificially;

(3) Radiation device shall mean any device that produces ionizing radiations radiation when associated control devices are operated or operable;

(4) ~~Radiation source shall mean a radiation device or radioactive material; Source of radiation shall mean any radioactive material or any device or equipment emitting or capable of producing radiation;~~

(5) Undesirable radiation shall mean ~~gamma rays, X-rays, alpha and beta particles, high speed electrons, neutrons, protons and other nuclear particles or rays~~

Radiation in such quantity and under such circumstances as determined from time to time by regulations adopted by the Department of Health;

(6) Person shall mean any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto;

(7) Registration shall mean registration with the Department of Health pursuant to its rules and regulations;

(8) Department shall mean the Department of Health;

(9) Coordinator shall mean the ~~coordinator--of atomic development activities provided--for--in--sections 74-3504 to 74-3549~~ Director of Health; and

(10) Council shall mean the radiation advisory council as provided for in sections 71-3501 to 71-3519;

(11) Electronic product shall mean any manufactured product, device, assembly, or assemblies of such products or devices which, during operation in an electronic circuit, can generate or emit a physical field of radiation;

(12) License shall mean (a) a general license issued pursuant to regulations promulgated by the Department of Health without the filing of an application to permit the licensee to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing by-products, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially, or (b) a specific license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing by-products, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially;

(13) By-product material shall mean any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or

utilizing special nuclear material:

(14) Source material shall mean (a) uranium, thorium, or any other material which the Governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material to be such, or (b) ores containing one or more of such materials in such concentration as the Governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material in such concentration to be source material; and

(15) Special nuclear material shall mean (a) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Governor declares by order to be special nuclear material after the United States Atomic Energy Commission, or any successor thereto, has determined the material to be such, but shall not include source material, or (b) any material artificially enriched by any such materials, but shall not include source material.

Sec. 4. That section 71-3504, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3504. (1) The Director of Health shall be the coordinator of atomic--development radiation control activities, and the Director of Health may, at--his option, designate a deputy Director of Radiation Control. The coordinator--or--his--deputy Director of Health shall: (a) Advise the Governor and agencies of the state on matters relating to ionizing radiation; and (b) coordinate development--and regulatory activities of the state relating to ionizing radiation, including cooperation with other states and the federal government.

(2) The coordinator---or---his---representative Director of Health shall:

(a) Review before and after the holding of any public hearing required under the provisions of Chapter 84, article 9, prior to promulgation, the proposed rules and regulations of all agencies of the state relating to use and control of ionizing radiation, to assure that such rules and regulations are consistent with rules and regulations of other agencies of the state;

(b) When he determines that proposed rules or regulations or parts thereof are inconsistent with rules and regulations of other agencies of the state, consult

with the radiation advisory council in an effort to resolve such inconsistency. Upon notification by the council that such inconsistency has not been resolved, the Governor may, after consultation with the council and the Director of Health, find that the proposed rules and regulations or parts thereof are inconsistent with rules and regulations of other agencies of the state or the federal government and may issue an order to that effect, in which event the proposed rules and regulations or parts thereof shall not become effective. The Governor may, in the alternative, upon a similar determination, direct the appropriate agency or agencies to amend or repeal existing rules and regulations to achieve consistency with the proposed rules and regulations;

(c) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of ~~or--with~~ development-of-new-uses-for-ionizing radiation;

(d) Collect and disseminate information relating to ionizing radiation; and

(e) Based upon current information provided by agencies of the state: Maintain a file of all registrations, amendments, transfers, modifications, inspections and recommendations pertaining to ionizing radiation; maintain a file of registrants possessing or using sources of ionizing radiation requiring registration under the provisions of sections 71-3501 to 71-3519 and in any administrative action pertaining thereto; and maintain a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated and proceedings thereon.

(3) The several agencies of the state and political subdivisions shall keep the coordinator fully and currently informed as to their activities relating to development of new uses and regulation of sources of ionizing radiation.

Sec. 5. That section 71-3505, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3505. Matters relative to ionizing radiation as they relate to the public health and safety shall be a responsibility of the Department of Health. The department shall:

(1) Develop comprehensive policies and programs for the evaluation and determination of undesirable

radiation associated with the production, use, storage, or disposal of radiation sources; and formulate, adopt, promulgate and repeal rules and regulations which may provide for registration under the provisions of section 71-3507 and for or licensure as provided by section 71-3509, or and for registration or licensure of any other source of ~~ionizing radiation that is not controlled by a licensed practitioner of the healing arts, to control sources of ionizing~~ radiation so as to reasonably protect the health and safety of the people of Nebraska in a manner compatible with regulatory programs of the federal government. Such rules and regulations may prohibit the use of ~~ionizing~~ radiation for uses found by the department to be detrimental to health or safety and shall carry out the purposes and policies set out in sections 71-3501 and 71-3502; Provided, that such rules and regulations shall not prohibit or limit the kind or amount of ~~ionizing~~ radiation purposely prescribed for or administered to a patient by doctors of medicine and surgery, dentistry, osteopathy, chiropractic, podiatry, and veterinary medicine, and engaged in the lawful practice of his profession, or administered by other professional personnel, such as X-ray technicians, nurses, and laboratory workers, acting under the direct supervision of a licensed practitioner;

(2) Inform the council of any such rules and regulations at least thirty days prior to their adoption, and consider any recommendations of the council;

(3) Have the authority to accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(4) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to sources of ~~ionizing~~ radiation;

(5) Collect and disseminate health education information relating to radiation protection;

(6) Make its facilities available so that any person or any agency may request the department to review and comment on plans and specifications of installations submitted by the person or agency, with respect to matters of protection and safety, for the control of undesirable radiation; and

(7) Be empowered to inspect radiation sources, their shieldings and surroundings for the determination of any possible undesirable radiation, or violations of

rules and regulations promulgated by the department; and provide the owner, user or operator with a report of any known or suspected deficiencies.

Sec. 6. That section 71-3506, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3506. (1) There is hereby established a radiation advisory council within the department consisting of nine members to be appointed by the Governor. The Governor shall appoint to the council one individual with experience relating to ~~radioactivity radiation~~ from each of the following fields: (a) Radiology, (b) medicine, exclusive of radiology, (c) radiation or health physics, (d) law, (e) agriculture, (f) labor, (g) business or industry, (h) dentistry, and (i) chiropractic, osteopathy or podiatry. Each appointed member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. The terms of office of the members first taking office shall expire, as designated at the time of appointment, three at the end of the first year, three at the end of the second year, and three at the end of the third year. After the date of appointment, appointed council members, while serving on business of the council, shall receive compensation at the rate of twenty dollars per day and shall also be entitled to receive actual and necessary travel and subsistence expenses while so serving.

(2) The council shall:

(a) Elect a chairman to serve at the pleasure of the council;

(b) Meet on call of the chairman or at the request of any three members;

(c) Review and evaluate policies and programs of the state relating to ~~ionizing~~ radiation; and

(d) Make recommendations to the coordinator and the department and furnish such technical advice as may be required on matters relating to development, utilization and regulation of sources of ~~ionizing~~ radiation.

Sec. 7. That section 71-3507, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3507. (1) The department shall cause to be registered with the department such sources of ~~ionizing~~ radiation as the department determines to be reasonably necessary to protect the health and safety of the people of the State of Nebraska, as follows:

(a) The department shall, by public notice, establish a date on or before which date said sources of ~~ionizing~~ radiation shall be registered with the department, and the department shall provide appropriate forms for such registration. Each application for registration shall be in writing and shall state such information as the department by rules or ~~regulation~~ regulations may determine to be necessary and reasonable to protect the public health and safety;

(b) Registration of sources of ~~ionizing~~ radiation shall be an initial registration, ~~requiring~~ ~~annual~~ ~~renewal~~; with appropriate notification to the department in the case of alteration of equipment, acquisition of new sources of ~~ionizing~~ radiation, or the transfer, loss or destruction of sources of ~~ionizing~~ radiation;

(c) Failure to register sources of ~~ionizing~~ radiation in accordance with rules and regulations promulgated by the department shall be subject to a fine of not less than fifty dollars nor more than two hundred dollars; and

(d) There shall be no fee for registration.

(2) The department is authorized to exempt certain sources of ~~ionizing~~ radiation or kinds of uses or users from the licensing or registration requirements set forth in sections 71-3501 to 71-3519 when the department makes a finding that the exemption of such sources of ~~ionizing~~ radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(3) Rules and regulations promulgated pursuant to sections 71-3501 to 71-3519 may provide for recognition of other state or federal licenses to the extent the department determines that such recognition will achieve the purposes and policies of sections 71-3501 to 71-3519.

(4) The department shall have the right to make such surveys or inspections of sources of ~~ionizing~~ radiation as the department deems necessary for the control of undesirable radiation; Provided, that any such survey or inspection shall be performed at a reasonable time or with adequate prior notification by the department of the owner or user of such sources of

ionizing radiation.

(5) The results of any surveys or inspections of sources of ionizing radiation conducted by the department may be withheld from public inspection if disclosure of its contents is not required in the public interest and would adversely affect the interest of a person concerned. The department shall make such reports of results of surveys or inspections to the owner or operator of the source of ionizing radiation, together with any recommendations of the department regarding deficiencies noted.

(6) The department shall have the right to survey or inspect again any source of ionizing radiation previously surveyed, without limitation of the number of surveys or inspections conducted on a given source of ionizing radiation; provided, that the provisions of adequate notification as listed in subsection (4) of this section shall be complied with.

Sec. 8. That section 71-3508, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3508. (1) The department shall require each person who possesses or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer or disposal and such other records as the department may require subject to such exemptions as may be provided by rules or regulations.

(2) The department shall require each person who possesses or uses a source of ionizing radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations of the department. Copies of these records and those required to be kept by subsection (1) of this section shall be submitted to the department on request. Any person possessing or using a source of ionizing radiation shall furnish to each employee for whom personnel monitoring is required a copy of each employee's personal exposure record ~~annually~~, at any time such employee has received exposure in excess of the amount specified in the regulations of the department, and upon termination of employment. A copy of his annual exposure record shall be furnished to the employee upon his request.

Sec. 9. That section 71-3509, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3509. (1) The Governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state.

(2) The department may, upon discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by the state, cause to be licensed by the department such sources of ionizing radiation as are assumed by the state under the terms of the agreement authorized in subsection (1) of this section.

(3) Any person who, on the effective date of an agreement under subsection (1) of this section, possesses a license issued by the federal government may be deemed to possess the same pursuant to a license issued under sections 71-3501 to 71-3519. Such license shall expire ninety days after receipt from the department of a notice of expiration of such license, or on the date of expiration specified in the federal license, whichever is the earlier.

Sec. 10. That section 71-3510, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3510. (1) The department is authorized to enter into an agreement or agreements with the federal government, other states or interstate agencies, whereby this state will perform on a cooperative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(2) The department may institute training programs for the purpose of qualifying personnel to carry out the provisions of sections 71-3501 to 71-3519, and may make such personnel available for participation in any program or programs of the federal government, other states or interstate agencies, in furtherance of the purposes of sections 71-3501 to 71-3519.

Sec. 11. That section 71-3511, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3511. Ordinances, resolutions or regulations, now or hereafter in effect, of the governing body of a municipality or county or board of health relating to sources of ionizing radiation shall not be superseded by

sections 71-3501 to 71-3519; Provided, that such ordinances or regulations must be consistent with the provisions of sections 71-3501 to 71-3519, amendments thereto and rules and regulations thereunder.

Sec. 12. That section 71-3513, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3513. Whenever the department finds that an emergency exists with respect to ~~ionizing~~ radiation requiring immediate action to protect the public health and safety, the department may, without notice or hearing, or submission to the coordinator or council, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provisions of law, such regulation or order shall be effective immediately. Any person to whom such regulation or order is directed shall comply therewith immediately, but ~~an~~ an application to the department shall be afforded a hearing not less than fifteen days and not more than thirty days after filing of the application. On the basis of such hearing, the emergency regulation or order shall be continued, modified or revoked within thirty days after such hearing, and the department shall mail the applicant a copy of its findings of fact and determination.

Sec. 13. That section 71-3515, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3515. It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own or possess any source of ~~ionizing~~ radiation unless registered with or licensed by the department when registration or licensing is required in accordance with the provisions of sections 71-3501 to 71-3519.

Sec. 14. That section 71-3516, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3516. The department shall have the authority in the event of an emergency affecting public health and safety to impound or order the impounding of sources of ~~ionizing~~ radiation, in the possession of any person who is not equipped to observe or fails to observe the provisions of sections 71-3501 to 71-3519 or any rules or regulations issued thereunder.

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Sec. 15. That original sections 71-3501 to 71-3511, 71-3513, 71-3515, and 71-3516, Reissue Revised Statutes of Nebraska, 1943, are repealed.