

LEGISLATIVE BILL 390

Approved by the Governor May 29, 1987

Introduced by Wesely, 26

AN ACT relating to public health and welfare; to amend sections 71-1,104, 71-3501 to 71-3505, 71-3507 to 71-3511, and 71-3513 to 71-3519, Reissue Revised Statutes of Nebraska, 1943; to provide for the waiver of certain requirements for a license to practice medicine and surgery; to restate intent relating to radiation control; to define and redefine terms; to change provisions relating to powers and duties of the Director and Department of Health; to change fees; to provide for rules and regulations; to provide for licenses; to change registration provisions; to provide for copies and inspection of records; to provide for the transfer of title to certain property; to provide for the acquisition and disposal of real property; to provide fees; to create funds; to change provisions relating to certain agreements; to provide for public hearings; to provide for an impact analysis of certain activities; to provide for enforcement; to provide requirements for certain operators of X-ray systems; to eliminate an exemption; to harmonize provisions; to provide operative dates; to provide severability; and to repeal the original sections, and also section 71-3512, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 71-1,104, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1,104. Each applicant for a license to practice medicine and surgery shall (1) present proof that he or she is a graduate of an accredited school or college of medicine or, if a foreign medical graduate, provide a copy of a permanent certificate issued by the Educational Commission on Foreign Medical Graduates that is currently effective and relates to such applicant, or provide such credentials as are necessary to certify that such a foreign medical graduate has successfully

passed the Visa Qualifying Examination, or its successor or equivalent examination, required by the United States Department of Health and Human Services and the United States Immigration and Naturalization Service, or, if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission on Foreign Medical Graduates examination, but has not yet received the permanent certificate attesting to the same, provide such credentials as certify the same to the Department of Health, (2) present proof that he or she has served at least one year of graduate medical education approved by the Board of Examiners in Medicine and Surgery or, if a foreign medical graduate, present proof that he or she has served at least three years of graduate medical education approved by the Board of Examiners in Medicine and Surgery, and (3) pass an examination prescribed and conducted by the Board of Examiners in Medicine and Surgery and approved by the Department of Health covering appropriate medical subjects.

The Department of Health, upon the recommendation of the Board of Examiners in Medicine and Surgery, may waive any requirement for more than one year of approved graduate medical education, as set forth in subdivision (2) of this section, if the applicant has served at least one year of graduate medical education approved by such board and if the following conditions are met: (a) The applicant meets all other qualifications for a license to practice medicine and surgery; (b) the applicant submits satisfactory proof that the issuance of a license based on the waiver of the requirement of more than one year of approved graduate medical education will not jeopardize the health, safety, and welfare of the citizens of this state; and (c) the applicant submits proof that he or she will enter into the practice of medicine in a medical shortage area designated as such by the Commission on Rural Health Manpower immediately upon obtaining a license to practice medicine and surgery based upon a waiver of the requirement for more than one year of graduate medical education.

A license issued on the basis of such a waiver shall be subject to the limitation that the licensee continue in practice in the medical shortage area and such other limitations, if any, deemed appropriate under the circumstances by the Director of Health, upon recommendation of the Board of Examiners in Medicine and

Surgery, which may include, but shall not be limited to, supervision by a medical practitioner, training, education, and scope of practice. After two years of practice under a limited license issued on the basis of a waiver of the requirement of more than one year of graduate medical education, a licensee may apply to the Department of Health for removal of the limitations. The Director of Health, upon the recommendation of the Board of Examiners in Medicine and Surgery, may grant or deny such application or may continue the license with limitations. The fee for a license to practice medicine and surgery based on a waiver of the requirement of more than one year of graduate medical education and the renewal of such license shall be the same as the fees prescribed in subdivision (1)(b), (c), or (d) of section 71-162.

In addition to any other grounds for disciplinary action against the license contained in the Uniform Licensing Law, the Department of Health may take disciplinary action against a license granted on the basis of a waiver of the requirement of more than one year of graduate medical education, for violation of the limitations on the license. The Department of Health, upon the recommendation of the Board of Examiners in Medicine and Surgery, shall adopt and promulgate rules and regulations for the purpose of implementing and administering this section.

Sec. 2. 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 occupational and public health and safety and the environment:

(1) To institute and maintain a regulatory program for sources of radiation so as to provide for:

(a) ~~compatibility~~ Compatibility and equivalency with the standards and regulatory programs of the federal government; 7

(b) ~~a~~ A single effective system of regulation within the state; 7 and

(c) ~~a~~ A system consonant insofar as possible with those of other states; ~~and~~

(2) ~~to~~ To institute and maintain a program to permit development and utilization of sources of radiation for peaceful purposes consistent with the protection of occupational and public health and safety of the public and the environment;

(3) To maximize the protection practicable for

the citizens of Nebraska from ionizing radiation by establishing requirements for appropriate education and training of persons operating an X-ray system; and

(4) To provide for the availability of capacity either within or outside the state for the management of low-level radioactive waste generated within the state, except for waste generated as a result of defense or federal research and development activities, and to recognize that such radioactive waste can be most safely and efficiently managed on a regional basis.

Sec. 3. 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~~ the Radiation Control Act to effectuate the policies set forth in section 71-3501 by providing for:

(1) A program of effective regulation of sources of radiation for the protection of the occupational and public health and safety and the environment;

(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 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 radiation; ~~and~~

(4) A program to permit maximum utilization of sources of radiation consistent with the health and safety of the public; ~~and~~

(5) A program which establishes requirements and standards for appropriate education, training, written testing, and practical testing of persons operating an X-ray system.

Sec. 4. 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~~ the Radiation Control Act, unless the context otherwise requires:

(1) Radiation shall mean ~~(a)~~ ionizing radiation including and nonionizing radiation as follows:

(a) Ionizing radiation shall mean gamma rays,

X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or nuclear particles or rays, but shall not include sound or radio waves or visible, infrared, or ultraviolet light; and

(b) Nonionizing radiation shall mean (i) 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 occupational and the public health and safety and the environment, and (e) other than ionizing electromagnetic radiation, and (ii) 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 occupational and the public health and safety and the environment;

(2) Radioactive material shall mean any material, whether solid, liquid, or gas, which emits ionizing radiation spontaneously, whether occurring naturally or produced artificially. Radioactive material shall include, but not be limited to, accelerator-produced material, byproduct material, naturally occurring material, source material, and special nuclear material;

(3) Radiation-generating equipment shall mean any manufactured product or device, component part of such a product or device, or machine or system which during operation can generate or emit radiation, except devices which emit radiation only from radioactive material; Radiation device shall mean any device that produces radiation when associated control devices are operated or operable;

(4) Source Sources of radiation shall mean any radioactive material and or any device or equipment emitting or capable of producing radiation radiation-generating equipment;

(5) Undesirable radiation shall mean radiation in such quantity and under such circumstances as determined from time to time by rules and regulations adopted and promulgated by the Department of Health department;

(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, but shall not include not including federal government agencies;

(7) Registration shall mean registration with the Department of Health department pursuant to Chapter 71, article 35 the Radiation Control Act;

(8) Department shall mean the Department of Health;

(9) Coordinator shall mean the Director of Health;

(10) Council shall mean the radiation advisory council provided for in Chapter 71, article 35 section 71-3506;

(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 rules and regulations adopted and promulgated by the Department of Health department without the filing of an application with the Department of Health department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing radioactive materials; or

(b) a specific license, issued to a named person upon application filed with the Department of Health department pursuant to Chapter 71, article 35 the Radiation Control Act and rules and regulations adopted and promulgated pursuant to the act, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing radioactive materials;

(13) Byproduct material shall mean:

(a) Any 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; or

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content;

(14) Source material shall mean:

(a) uranium Uranium or thorium or any combination thereof, in any physical or chemical form; or

(b) ores Ores which contain by weight one-twentieth of one per cent or more of uranium, thorium, or any combination thereof. Source material does shall not include special nuclear material;

(15) Special nuclear material shall mean:

(a) ~~plutonium~~ Plutonium, uranium 233, or uranium enriched in the isotope 233 or in the isotope 235, but shall not include source material; or

(b) ~~any~~ Any material artificially enriched by any such materials, but shall not include source material; ~~and~~

(16) Users of ~~radioactive material sources of radiation~~ shall mean:

(a) ~~Physicians using radioactive material or radiation-generating equipment~~ for human use;

(b) ~~natural~~ Natural persons using radioactive material ~~or radiation-generating equipment~~ for education, research, or development purposes;

(c) ~~natural~~ Natural persons using radioactive material ~~or radiation-generating equipment~~ for manufacture or distribution purposes;

(d) ~~natural~~ Natural persons using radioactive material ~~or radiation-generating equipment~~ for industrial purposes; and

(e) ~~natural~~ Natural persons using radioactive material ~~or radiation-generating equipment~~ for any other similar purpose;

(17) Civil penalty shall mean any monetary penalty levied on a licensee or registrant because of violations of statutes, rules, regulations, licenses, or registration certificates, but shall not include criminal penalties;

(18) Closure shall mean all activities performed at a waste-handling, processing, management, or disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance, and monitoring are necessary at the site following termination of licensed operation;

(19) Decommissioning shall mean final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care;

(20) Disposal shall mean the permanent isolation of low-level radioactive waste pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to such act;

(21) Generate shall mean to produce low-level radioactive waste, when used in relation to low-level radioactive waste;

(22) High-level radioactive waste shall mean:

(a) Irradiated reactor fuel;

(b) Liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or the equivalent in a facility for reprocessing irradiated reactor fuel; and

(c) Solids into which such liquid wastes have been converted;

(23) Low-level radioactive waste shall mean radioactive waste not defined as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in subdivision (13)(b) of this section;

(24) Management of low-level radioactive waste shall mean the handling, processing, storage, reduction in volume, disposal, or isolation of such waste from the biosphere in any manner, except the commercial disposal of low-level radioactive waste in a disposal facility, designated by the Central Interstate Low-Level Radioactive Waste Compact Commission;

(25) Source material mill tailings or mill tailings shall mean the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by such solution extraction processes;

(26) Source material milling shall mean any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium or thorium therefrom and which results in the production of source material and source material mill tailings;

(27) Spent nuclear fuel shall mean irradiated nuclear fuel that has undergone at least one year of decay since being used as a source of energy in a power reactor. Spent nuclear fuel shall include the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies;

(28) Transuranic waste shall mean radioactive waste containing alpha-emitting transuranic elements, with radioactive half-lives greater than five years, in excess of one hundred nanocuries per gram;

(29) Licensed practitioner shall mean a person licensed to practice medicine, dentistry, podiatry, chiropractic, or osteopathy; and

(30) X-ray system shall mean medical equipment which performs radiographic functions on humans by using

ionizing radiation for diagnostic purposes, excluding nuclear medicine and radiation therapy procedures.

Sec. 5. 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 radiation control activities, and the Director of Health may designate a Director of Radiation Control. The Director of Health shall:

(a) Advise the Governor and agencies of the state on matters relating to radiation; and

(b) ~~coordinate~~ Coordinate regulatory activities of the state relating to radiation, including cooperation with other states and the federal government.

(2) The 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 radiation, to assure that such rules and regulations are consistent with rules and regulations of other agencies of the state;

(b) When he or she 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~~ inconsistencies. Upon notification by the council that such ~~inconsistency~~ has inconsistencies have 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~~ other organizations concerned with control of sources of radiation; and

(d) Collect and disseminate information relating to the control of sources of radiation; and

maintain (i) a file of all registrants, license applications, issuances, denials, amendments, transfers, renewals, modifications, inspections, recommendations pertaining to radiation, suspensions, and revocations, (ii) a file of registrants possessing or using sources of radiation requiring registration under the Radiation Control Act and any administrative or judicial action pertaining to such registration, and (iii) a file of all rules and regulations relating to the regulation of sources of radiation, pending or promulgated, and proceedings on such rules and regulations thereon.

(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 radiation; maintain a file of registrants possessing or using sources of 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 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 radiation.

Sec. 6. That section 71-3505, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3505. Matters relative to radiation as they relate to the occupational and public health and safety and the environment shall be a responsibility of the Department of Health department. 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 or licensure under the provisions of section 71-3507 or licensure as provided by section 71-3509; and for registration or licensure of any other source of radiation as specified by rule or regulation so as to reasonably protect the occupational and public health and safety of the people of Nebraska and the environment in a manner compatible with regulatory programs of the federal government. The department for identical

purposes may also adopt and promulgate rules and regulations for the issuance of licenses, either general or specific, to persons for the purpose of using, manufacturing, producing, transporting, transferring, receiving, acquiring, owning, or possessing any source of radiation or any other matter, as described in subdivision (12) of section 71-3503 radioactive material. Such rules and regulations may prohibit the use of radiation for uses found by the department to be detrimental to occupational and public health or safety or the environment and shall carry out the purposes and policies set out in sections 71-3501 and 71-3502. ~~Such~~ ~~PROVIDED,~~ that such rules and regulations shall not prohibit or limit the kind or amount of radiation purposely prescribed for or administered to a patient by doctors of medicine and surgery, dentistry, osteopathy, chiropractic, podiatry, and veterinary medicine, and while engaged in the lawful practice of his such profession, or administered by other professional personnel, such as X-ray technicians allied health personnel, radiologic technologists, nurses, and laboratory workers, acting under the supervision of a licensed practitioner. Violation of rules and regulations adopted and promulgated by the department pursuant to sections 71-3501 to 71-3519 the Radiation Control Act shall be due cause for the suspension, revocation, or limitation of a license issued by the department. Any licensee may request a hearing before the department on the issue of such suspension, revocation, or limitation. Procedures for notice and opportunity for a hearing before the department shall be pursuant to the provisions of Chapter 84, article 9, and continued departmental suspension, revocation, or limitation subsequent to such a hearing shall also be subject to judicial review pursuant to such provisions;

(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 the control of sources of 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;

(7) Be empowered to inspect radiation sources, and their shieldings and surroundings for the determination of any possible undesirable radiation, or violations of rules and regulations adopted and promulgated by the department; and provide the owner, user, or operator with a report of any known or suspected deficiencies; and

(8) Collect a fee for each inspection of a emergency response or environmental surveillance, or both, offsite from each nuclear power plant equal to the amount cost of completing the inspection emergency response or environmental surveillance and any associated report. In no event shall the monthly fee for any nuclear power plant exceed two thousand dollars the lesser of the actual annual costs of such activities or thirty-six thousand dollars. The fee collected shall be deposited in the Department of Health Cash Fund and shall be used solely for the purpose of defraying the costs of the inspections emergency response and environmental surveillance conducted by the department; and

(9) Develop a program which establishes policies, requirements, and standards for appropriate education, training, written testing, and practical testing of persons operating an X-ray system.

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

71-3507. (1) The department shall adopt and promulgate rules and regulations for the issuance, amendment, suspension, and revocation of general and specific licenses. Such licenses shall be for byproduct material, source material, special nuclear material, and radioactive material not under the authority of the federal Nuclear Regulatory Commission and for devices or equipment utilizing such materials. The rules and regulations shall provide:

(a) For written applications for a specific license which include the technical, financial, and other qualifications determined by the department to be reasonable and necessary to protect occupational and public health and safety and the environment;

(b) For additional written statements and inspections, as required by the department, at any time after filing an application for a specific license and before the expiration of the license to determine whether the license should be issued, amended, suspended, or revoked;

(c) That all applications and statements be signed by the applicant or licensee;

(d) The form, terms, and conditions of general and specific licenses;

(e) That no license or right to possess or utilize sources of radiation granted by a license shall be assigned or in any manner disposed of without the written consent of the department; and

(f) That the terms and conditions of all licenses are subject to amendment by rules, regulations, or orders issued by the department.

(2) The department may require registration or licensing of radioactive material not enumerated in subsection (1) of this section.

(3) The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements when the department finds that the exemption will not constitute a significant risk to occupational and public health and safety and the environment.

(4) The department may provide by rule and regulation for the recognition of other state or federal licenses, subject to such recognition requirements as the department may prescribe.

(5) The department may enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with the Radiation Control Act and rules and regulations adopted and promulgated pursuant to such act, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

(6) The department shall cause to be registered with the department such sources of radiation as the department determines to be reasonably necessary to protect the occupational and public health and safety of the people of the State of Nebraska, and the environment as follows:

(a) The department shall, by public notice, establish a date on or before which date said such sources of 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 regulations may determine to be necessary and reasonable to protect the occupational and public health and safety and the environment;

(b) Registration of sources of radiation shall be an initial registration with appropriate notification to the department in the case of alteration of equipment, acquisition of new sources of radiation, or the transfer, loss, or destruction of sources of radiation and shall include the registration of persons installing or servicing sources of radiation;

(c) Failure to register or reregister sources of radiation in accordance with rules and regulations adopted and 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. The department may provide by rule and regulation for reregistration of sources of radiation.

~~(2) The department is authorized to exempt certain sources of 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 radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public. Violation of the regulations adopted by the department pursuant to sections 71-3501 to 71-3519 shall be due cause for the suspension or revocation of a registration issued by the department. Any registrant may request a hearing before the department on the issue of such suspension or revocation. Procedures for notice and opportunity for a hearing before the department shall be pursuant to the provisions of Chapter 84, article 9, and continued departmental suspension or revocation subsequent to such a hearing shall also be subject to judicial review pursuant to such provisions.~~

~~(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 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 radiation-

~~(5)~~ (7) The results of any surveys or inspections of sources of 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 available to the owner or operator of the source of radiation, together with any recommendations of the department regarding deficiencies noted.

~~(6)~~ (8) The department shall have the right to survey or inspect again any source of radiation previously surveyed, without limitation of the number of surveys or inspections conducted on a given source of radiation, ; PROVIDED, that the provisions of adequate notification as listed in subsection (4) of this section shall be complied with-

(9) The department may enter into contracts with persons or corporations to perform the inspection of X-ray radiation-generating equipment or devices which emit radiation from radioactive materials and to aid the department in the administration of the Radiation Control Act.

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 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. These records shall be made available for inspection by or copies shall be submitted to the department on request.

(2) The department shall require each person who possesses or uses a source of 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 radiation shall furnish to each employee for whom personnel monitoring is required a copy of each employee's personal exposure record at any time such employee has received exposure in excess of the amount

specified in the rules and regulations of the department; and upon termination of employment. A copy of the annual exposure record shall be furnished to the employee upon his or her request.

(3) The department may adopt and promulgate rules and regulations establishing qualifications pertaining to the education, knowledge of radiation safety procedures, training, experience, utilization, facilities, equipment, and the radiation protection program that an individual user of radioactive material pursuant to subdivision (16) of section 71-3503 sources of radiation must possess prior to using any source of radioactive material radiation or radiation-generating equipment. Individuals who are currently licensed in the State of Nebraska as podiatrists, chiropractors, dentists, physicians and surgeons, osteopaths, and veterinarians or certified as physician assistants shall be exempt from the rules and regulations of the department pertaining to the training requirements for the use of X-ray radiation-generating equipment operated for diagnostic purposes.

Sec. 9. (1) Any radioactive materials license issued or renewed after the operative date of this section for any activity which results in the production of byproduct material as defined in subdivision (13)(b) of section 71-3503 shall contain such terms and conditions as the department determines to be necessary to assure that prior to termination of such license:

(a) The licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the department which shall be equivalent, to the extent practicable, or more stringent than those of the federal Nuclear Regulatory Commission for sites (i) at which ores are processed primarily for their source material content and (ii) at which such byproduct material or mill tailings are deposited; and

(b) Ownership of any disposal site and such byproduct material or mill tailings which resulted from the licensed activity will, subject to subsection (2) of this section, be transferred to (i) the United States or (ii) this state if the state exercises the option to acquire land used for the disposal of such byproduct material or mill tailings. Any license which is in effect on the operative date of this section and which is subsequently terminated without renewal shall comply with subdivisions (1)(a) and (b) of this section upon termination.

(2)(a) The department shall require by rule, regulation, or order that prior to the termination of

any license which is issued after the operative date of this section, title to the land, including any interests therein, other than land held in trust by the United States for any Indian tribe or owned by an Indian tribe subject to a restriction against alienation imposed by the United States or land already owned by the United States or by the state, which is used pursuant to such license for the disposal of byproduct material or source material mill tailings will be transferred to (i) the United States or (ii) this state, unless the federal Nuclear Regulatory Commission determines prior to such termination that transfer of title to such land and such byproduct material or mill tailings is not necessary or desirable to protect the occupational and public health and safety and the environment or to minimize danger to life or property.

(b) If transfer to the state of title to such byproduct material or mill tailings and land is required, the state may assume title, following the federal Nuclear Regulatory Commission's determination that the licensee has complied with applicable standards and requirements under the license, and the department shall maintain the byproduct material or mill tailings and land in such manner as will protect the occupational and public health and safety and the environment.

(c) The department may undertake such monitoring, maintenance, and emergency measures as are necessary to protect the occupational and public health and safety and the environment for those materials and property to which the state has assumed title pursuant to this section.

(d) The transfer of title to the United States or this state shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(e) Title transferred pursuant to this section shall be transferred without cost to the United States or this state other than the administrative and legal costs incurred in carrying out such transfer.

(3) In the licensing and regulation of byproduct material and source material mill tailings or of any activity which results in the production of byproduct material or mill tailings, the department shall require compliance with applicable standards adopted and promulgated by the department which are equivalent, to the extent practicable, or more stringent than standards adopted and enforced by the federal Nuclear Regulatory Commission for the same purpose, including requirements and standards promulgated by the

federal Environmental Protection Agency.

Sec. 10. (1) In addition to the provisions of the Low-Level Radioactive Waste Disposal Act, the state may accept or acquire, by gift, transfer, or purchase, from another governmental agency or private person, suitable sites including land and appurtenances for the management of low-level radioactive waste. Sites received by gift or transfer shall be subject to approval and acceptance by the Legislature.

(2) Lands and appurtenances which are used for the management of low-level radioactive waste shall be acquired in fee simple absolute and used exclusively for such purpose until the department determines that such exclusive use is not required to protect the occupational and public health and safety or the environment. Before such site is leased for other use, the radioactive waste history of the site shall be recorded in the permanent land records of the site. All radioactive material accepted by the site operator or by any agent of the site operator for management on a radioactive waste management site shall become the property of the state.

(3) The department may contract with third parties for management of a low-level radioactive waste site acquired pursuant to subsection (2) of this section or which is already owned by the state. A contract operator shall be subject to the surety and long-term-care funding provisions of section 12 of this act and to appropriate licensing by the federal Nuclear Regulatory Commission or by the department.

(4) The department shall not approve any application for a license to receive radioactive waste from other persons for disposal on land not owned by the state or federal government.

Sec. 11. (1) The department shall establish by rule and regulation annual fees for the radioactive materials licenses, for inspections of radioactive materials, and for the registration and inspection of radiation-generating equipment and other sources of radiation under the Radiation Control Act, except that the annual fee for registration and inspection of X-ray radiation-generating equipment shall not exceed seventy dollars per X-ray machine. The annual fee for registration and inspection of X-ray radiation-generating equipment shall terminate on September 1, 1991. In determining such fees, the department shall, as an objective, obtain sufficient funds from the fees to pay for a portion of the direct and indirect costs of administering the Radiation

Control Act without loss or reduction of the General Fund allocation to the department. No fee shall exceed the actual cost to the department for licensure, inspection, or registration. The department may also contract with a registrant, a licensee, another state, or a federal agency to partially or fully recover the cost of administering the Radiation Control Act. The fees collected shall be deposited in the Department of Health Cash Fund and shall be used solely for the purpose of defraying the direct and indirect costs of administering the Radiation Control Act. The department shall collect such fees. The cost of environmental surveillance activities performed by the department to assess the radiological impact of activities conducted by licensees and registrants shall be in addition to the annual fees.

(2) The department may, upon application by an interested person or on its own initiative, grant such exemptions from the requirements of this section as it determines are in the public interest. Applications for exemption under this subsection may include, but shall not be limited to, the use of licensed materials for educational or noncommercial displays or scientific collections.

(3) When a registrant or licensee fails to pay the applicable fee, the department may suspend or revoke the registration or license or may issue an appropriate order.

Sec. 12. (1) For licensed activities involving source material milling, source material mill tailings, and management of low-level radioactive waste, the department shall, and for other classes of licensed activities the department may, adopt and promulgate rules and regulations which establish standards and procedures to ensure that the licensee will provide an adequate surety or other financial arrangement to permit the completion of all requirements established by the department for the licensure, regulation, decontamination, closure, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with such licensed activity in case the licensee should default for any reason in performing such requirements. All sureties required which are forfeited shall be paid to the department for deposit by the State Treasurer in the Department of Health Radiation Site Closure and Reclamation Cash Fund, which fund is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269. Money

in such fund shall be expended by the department as necessary to complete the closure and reclamation requirements. Money in the fund shall not be used for normal operating expenses of the department.

(2) For licensed activities involving the disposal of source material mill tailings and management of low-level radioactive waste, the department shall, and for other classes of licensed activities when radioactive material which will require surveillance or care is likely to remain at the site after the licensed activities cease the department may, adopt and promulgate rules and regulations which establish standards and procedures to ensure that the licensee, before termination of the license, will make available such funding arrangements as may be necessary to provide for long-term site surveillance and care. All such funds collected from licensees shall be paid to the department for deposit by the State Treasurer in the Department of Health Radiation Long-term Care Cash Fund, which fund is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269. All funds accrued as interest on money deposited in this fund may be expended by the department for the continuing long-term surveillance, maintenance, and other care of facilities from which such funds are collected as necessary for protection of the occupational and public health and safety and the environment. If title to and custody of any radioactive material and its disposal site are transferred to the United States upon termination of any license for which funds have been collected for such long-term care, the collected funds and interest accrued thereon shall be transferred to the United States.

(3) The sureties or other financial arrangements and funds required by this section shall be established in amounts sufficient to ensure compliance with standards, if any, established by the department pertaining to licensure, regulation, closure, decommissioning, reclamation, and long-term site surveillance and care of such facilities and sites.

(4) To provide for the proper care and surveillance of sites subject to subsection (2) of this section which are not subject to section 9 or 10 of this act, the state may acquire by gift or transfer from another governmental agency or private person any land and appurtenances necessary to fulfill the purposes of this section. Any such gift or transfer shall be subject to approval and acceptance by the Legislature.

(5) The department may by contract, agreement, lease, or license with any person, including another state agency, provide for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this section as needed to carry out the purposes of this section.

(6) If a person licensed by any governmental agency other than the department desires to transfer a site to the state for the purpose of administering or providing long-term care, a lump-sum deposit shall be made to the Department of Health Radiation Long-term Care Cash Fund. The amount of such deposit shall be determined by the department taking into account the factors stated in subsections (1) and (2) of this section.

Sec. 13. 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~~ may enter into agreements with the federal government Nuclear Regulatory Commission pursuant to the federal Atomic Energy Act of 1954, section 274b, as amended, providing for discontinuance of certain of the federal government's responsibilities such commission's licensing and related regulatory authority with respect to sources of radiation byproduct material, source material, and special nuclear material and the assumption thereof of regulatory authority for such materials by this state.

(2) The department may, upon discontinuance of certain of the federal government's responsibilities such commission's licensing and related regulatory authority with respect to sources of radiation byproduct material, source material, and special nuclear material and the assumption thereof of regulatory authority for such materials by the state, cause to be licensed by the department such sources of radiation as are assumed by the state materials over which the state has assumed licensing and related regulatory authority 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 Nuclear Regulatory Commission for radioactive material subject to the agreement shall be deemed to possess the same pursuant to a license like those issued under sections 71-3501 to 71-3519 the Radiation Control Act. Such license shall expire either 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 Nuclear Regulatory Commission license, whichever is the earlier.

Sec. 14. That section 71-3510, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3510. (1) The department ~~is authorized to~~ may enter into an agreement or agreements with the federal government Nuclear Regulatory Commission pursuant to the federal Atomic Energy Act of 1954, section 274i, as amended, other federal governmental agencies as authorized by law, other states, or interstate agencies, whereby this state will perform on a cooperative basis with the federal government Nuclear Regulatory Commission, other federal governmental agencies, other states, or interstate agencies, inspections or other functions relating to control of sources of 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, Radiation Control Act~~ 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~~ such act.

Sec. 15. That section 71-3511, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3511. Any ordinance, resolution, or regulation, now or hereafter in effect, of the governing body of a municipality, county, or state agency relating to sources of radiation that is inconsistent with ~~sections 71-3501 to 71-3519 the Radiation Control Act, amendments thereto, or rules and regulations thereunder, adopted and promulgated pursuant to the act~~ is superseded by such sections the act.

Sec. 16. That section 71-3513, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3513. (1) In any proceeding for the issuance or modification of rules or regulations relating to control of sources of radiation, the department shall provide an opportunity for public participation through written comments and a public hearing.

(2) In any proceeding for the denial of an application for a license or for the amendment,

suspension, or revocation of a license, the department shall provide the applicant or licensee an opportunity for a hearing on the record.

(3) In any proceeding for licensing ores processed primarily for their source material content and management of byproduct material and source material mill tailings, or for licensing management of low-level radioactive waste, the department shall provide:

(a) An opportunity, after public notice, for written comments and a public hearing with a transcript;

(b) An opportunity for cross examination; and

(c) A written determination of the action to be taken which is based upon findings included in the determination and upon evidence presented during the public comment period.

(4) In any proceeding for licensing ores processed primarily for their source material content and disposal of byproduct material and source material mill tailings, or for licensing management of low-level radioactive waste, the department shall prepare, for each licensed activity which has a significant impact on the occupational or public health and safety or the environment, a written analysis of the impact of such licensed activity. The analysis shall be available to the public before the commencement of the hearing and shall include:

(a) An assessment of the radiological and nonradiological impacts to the public health;

(b) An assessment of any impact on any waterway and groundwater;

(c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted; and

(d) Consideration of the long-term impacts, including decommissioning, decontamination, and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after such decommissioning, decontamination, and reclamation.

(5) The department shall prohibit any major construction with respect to any activity for which an environmental impact analysis is required by this section prior to completion of such analysis.

(6) Whenever the department finds that an emergency exists with respect to radiation requiring immediate action to protect the occupational or public health and safety or the environment, the department may, without notice, ~~or~~ hearing, or submission to the coordinator, ~~or~~ ~~conneit~~, 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 the Radiation Control Act, such regulation or order shall be effective immediately. Any person to whom such regulation or order is directed shall comply ~~therewith~~ immediately, but on 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.

(7) Any final department action or order entered pursuant to subsection (1), (2), (3), or (6) of this section shall be subject to judicial review pursuant to sections 84-917 to 84-919.

Sec. 17. That section 71-3514, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3514. Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of ~~sections 71-3501 to 71-3519; the Radiation Control Act~~ or any rule, regulation, or order issued ~~thereunder pursuant to the act~~, the Attorney General or any county attorney may make application to the district court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

Sec. 18. 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, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of radiation unless registered with or licensed by the department as required by section ~~71-3505, 71-3507, or unless licensed by the department as required by sections 71-3505 and 71-3509.~~

Sec. 19. 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 occupational or public health and safety or the environment to impound or order the impounding of sources of 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 the Radiation Control Act or any rules or regulations issued thereunder pursuant to such act.

Sec. 20. That section 71-3517, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3517. (1) Any person who violates any of the provisions of sections 71-3501 to 71-3519 or rules, regulations or orders in effect pursuant thereto of the department the Radiation Control Act shall be guilty of a Class IV misdemeanor.

(2) In addition to the penalty provided in subsection (1) of this section, any person who violates any provision of the Radiation Control Act or any rule, regulation, or order issued pursuant to such act or any term, condition, or limitation of any license or registration certificate issued pursuant to such act shall be subject to:

(a) License revocation, suspension, modification, condition, or limitation;

(b) The imposition of a civil penalty; or

(c) The terms of any appropriate order issued by the department.

(3) Whenever the department proposes to subject a person to the provisions of subsection (2) of this section, the department shall notify the person in writing (a) setting forth the date, facts, and nature of each act or omission with which the person is charged, (b) specifically identifying the particular provision or provisions of the section, rule, regulation, order, license, or registration certificate involved in the violation, (c) of the time, date, and place at which a full and fair hearing will be had on such charge, (d) that the department may revoke, suspend, modify, condition, or limit a license, impose a civil penalty, or enter an appropriate order, and (e) that upon failure to pay the civil penalty, if any, subsequently determined by the department, the penalty may be collected by civil action. The notice shall be delivered to each alleged violator not less than ten days before the time set for the hearing by personal service, by certified or registered mail to his or her last-known address, or by publication. Notice by

publication shall only be made if personal service or service by mail cannot be effectuated.

(4) Hearings held pursuant to subsection (3) of this section shall be held in accordance with rules and regulations adopted and promulgated by the department and shall provide for the alleged violator to present such evidence as may be proper. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the rules of the department. A full and complete record shall be kept of the proceedings.

(5) Following the hearing, the director shall determine whether the charges are true or not, and if true, the director may (a) issue a declaratory order finding the charges to be true, (b) revoke, suspend, modify, condition, or limit the license, (c) impose a civil penalty in an amount not to exceed ten thousand dollars for each violation, or (d) enter an appropriate order. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty and the amount of the penalty shall be based on the severity of the violation. A copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by either certified or registered mail to the alleged violator. The decision shall become final thirty days after the copy is mailed unless the alleged violator within such thirty-day period appeals the decision as provided in Chapter 84, article 9.

(6) Any civil penalty assessed and unpaid under subsection (5) of this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department shall, within thirty days from receipt, transmit any collected civil penalty to the State Treasurer for deposit in the Permanent School Fund.

Sec. 21. That section 71-3518, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3518. Nothing in sections 71-3501 to 71-3519 the Radiation Control Act shall be deemed to require the licensing or registration by any common carrier, contract carrier, private carrier, railway freight carrier, or railway express carrier transporting, storing, or handling any of the materials

described in ~~sections 71-3501 to 71-3519~~ such act in the ordinary course of ~~their such carrier's~~ business.

Sec. 22. That section 71-3519, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-3519. Sections 71-3501 to 71-3519 and sections 9 to 12 and 23 to 25 of this act shall be known and may be cited as the Radiation Control Act.

Sec. 23. (1) Any person who operates an X-ray system under the direction of a licensed practitioner, except a certified physician assistant, shall:

(a) Be certified as having completed a course of study in radiologic technology and training approved by the department. The department may base such certification upon the standards developed by the American Registry of Radiologic Technologists. Such standards, if approved by the department, may be in lieu of or in addition to any other certification requirement;

(b) Have completed a twenty-four-month educational program in radiography as approved by the department. The department may base the requirements for such a training program upon the programs developed by the Committee on Allied Health Education and Accreditation of the American Medical Association or any other national professional association or registry approved by the department; or

(c) If not employed solely as an X-ray system operator but whose duties may require operation of an X-ray system on a limited basis, have (i) completed a course of instruction in radiation use and safety consisting of sixteen contact hours of instruction incorporating the course material as provided in rules and regulations of the department pursuant to section 24 of this act and (ii) been tested on the course material described in subdivision (c)(i) of this subsection.

The department may also approve courses of instruction developed by associations, educational institutions, health care facilities, or other entities so long as such courses meet the criteria set out in the rules and regulations adopted and promulgated by the department. The rules and regulations shall include procedures for such entities to carry out approved courses of instruction and may include provisions to carry out the required testing. The rules and regulations shall provide that the prescribed instruction be administered by a licensed practitioner or under the direct supervision of an operator who meets the requirements of subdivision (a) or (b) of this

subsection. This section shall not prohibit any facility from exceeding the minimum hourly or instruction requirements.

(2) The requirements of subsection (1) of this section shall not apply to a student or trainee who operates an X-ray system while under the direct supervision of a licensed practitioner or under the direct supervision of an operator who meets the requirements of subdivision (1)(a) or (b) of this section.

Sec. 24. (1) The department shall adopt and promulgate rules and regulations which delineate the course of instruction for educational programs in radiation use and safety for operators of X-ray systems. Such courses shall include, but not be limited to, fundamentals of radiation, radiation safety, radiation detection instrumentation, operation and control of X-ray equipment, radiation protection, and federal and state regulations. The department shall recognize equivalent courses of instruction, including continuing education, successfully completed by individuals who are credentialed by the department when determining if the requirements of subdivision (1)(c) of section 23 of this act have been met.

(2) The department shall adopt and promulgate rules and regulations regarding the testing required in subdivision (1)(c)(ii) of section 23 of this act. Such rules and regulations shall provide for the development and administration of written and practical tests, procedures to be followed for testing, the method of grading and the passing grades for such tests, security protection for test questions and answers, and the contents of such tests based on the course requirements prescribed in subsection (1) of this section.

Sec. 25. Nothing in the Radiation Control Act shall be construed to allow the department to duplicate regulation by the federal government.

Sec. 26. Sections 23 and 24 of this act shall become operative on July 1, 1988. The remaining sections of this act shall become operative on their effective date.

Sec. 27. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 28. That original sections 71-1,104, 71-3501 to 71-3505, 71-3507 to 71-3511, and 71-3513 to 71-3519, Reissue Revised Statutes of Nebraska, 1943, and

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also section 71-3512, Reissue Revised Statutes of
Nebraska, 1943, are repealed.