

LEGISLATIVE BILL 874

Approved by the Governor March 1, 1988

Introduced by R. Johnson, 34

AN ACT relating to agriculture; to adopt the Plant Protection and Plant Pest Act; to eliminate provisions relating to the eradication of plant diseases and insect and animal pests; to eliminate and change provisions relating to the State Entomologist; to eliminate the Insect Pest and Plant Disease Administrative Cash Fund; to provide an operative date; to provide severability; and to repeal sections 2-1001 to 2-1015, 2-1021 to 2-1038, and 2-1046 to 2-1059, Reissue Revised Statutes of Nebraska, 1943, and sections 2-1016, 2-1017, and 2-1019 to 2-1020, Revised Statutes Supplement, 1986.

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

Section 1. This act shall be known and may be cited as the Plant Protection and Plant Pest Act.

Sec. 2. It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by preserving and protecting the plant industry. Because of the importance of the plant industry to the welfare and economy of the state and the damage which can result from the uncontrolled proliferation of plant pests, there is a need to impose standards and restrictions on the movement and care of plants within the state. The Department of Agriculture shall be charged with administering and enforcing such standards and restrictions through the Plant Protection and Plant Pest Act.

Sec. 3. For purposes of the Plant Protection and Plant Pest Act, unless the context otherwise requires, the definitions found in sections 4 to 18 of this act shall be used.

Sec. 4. Biological control agent shall mean any living organism which, because of its parasitic, predatory, or other biological characteristics, may be used or intended for use in the suppression or control of plant pests by biological rather than chemical means.

Sec. 5. Collector shall mean any person who only gathers wild plants for the purpose of

distribution.

Sec. 6. Dealer shall mean any person who does not grow nursery stock in Nebraska but is involved in:

(1) The acquisition and further distribution of nursery stock;

(2) The utilization of nursery stock for landscaping or purchase of nursery stock for other persons; or

(3) The distribution of nursery stock with a mechanical digger, commonly known as a tree spade, or by any other means.

Sec. 7. Department shall mean the Department of Agriculture.

Sec. 8. Distribute shall mean selling, exchanging, bartering, moving, transporting, offering to sell, exchange, barter, move, or transport, or otherwise supplying. Distribute shall not include moving or transporting on contiguous real estate that is owned, leased, or controlled by the same person.

Sec. 9. Grower shall mean any person growing and distributing nursery stock or actively involved in the management or supervision of a nursery.

Sec. 10. Nuisance plant shall mean any plant not economically essential to the welfare of the people of Nebraska, as determined by the department, and which may serve as a favorable host of plant pests or may be detrimental to the agricultural interests of the State of Nebraska.

Sec. 11. Nursery shall mean any property where nursery stock is grown, propagated, collected, or distributed and shall include, but not be limited to, private property or any property owned, leased, or managed by any agency of the United States, the State of Nebraska or its political subdivisions, or any other state or its political subdivisions where nursery stock is fumigated, treated, packed, or stored by any person.

Sec. 12. Nursery stock shall mean all field-grown or container-grown perennial plants, including, but not limited to, vegetative or propagative parts or perennial plants dug from the wild, so labeled, and distributed, and excluding, among other things, greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant.

Sec. 13. Person shall mean any body politic or corporate, society, community, the public generally, any individual, partnership, joint-stock company, or association, or any agent of any such entity.

Sec. 14. Plant shall mean any plant, plant

product, plant part, or reproductive or propagative part of a plant, plant product, or plant part including, but not limited to, trees, shrubs, vines, forage and cereal plants, fruit, seeds, grain, wood, or lumber. This shall include all growing media, packing material, or containers associated with the plants, plant parts, or plant products named in this section.

Sec. 15. Plant pest shall mean any insect, arthropod, nematode, mollusk, fungus, bacteria, virus, mycoplasma, parasitic plant, physiological disorder, or other infectious agent which can directly or indirectly injure or cause damage or a pathological condition to plants.

Sec. 16. Property shall mean any real estate or personal property, including any vessel, automobile, aircraft, rail car, other vehicle, machinery, building, dock, nursery, orchard, or other place where plants are grown or maintained or the contents of such place.

Sec. 17. Rules and regulations shall mean rules and regulations adopted and promulgated by the department pursuant to the Plant Protection and Plant Pest Act.

Sec. 18. Wild plants shall mean nursery stock from any place other than a nursery.

Sec. 19. There is hereby created in the department and under the direction of the Director of Agriculture the position of State Entomologist. Such person shall be a graduate of a recognized university with a major, or its equivalent, in entomology, plant pathology, or an equivalent biological science and have not less than two years of experience in such field and administrative work. It shall be the duty of the State Entomologist through the Plant Protection and Plant Pest Act to protect the interest of Nebraska as stated in section 2 of this act, to regulate the distribution of plants, and to assist exporters of plants in meeting the requirements imposed by other states or countries.

Sec. 20. For the purpose of enforcement of the Plant Protection and Plant Pest Act or any rule or regulation, the department may:

(1) Enter and inspect at reasonable times and in a reasonable manner all property where plants are grown, packed, or distributed and all vehicles, equipment, packing materials, containers, records, and labels on such property. The department may inspect and examine all records and property relating to compliance with the act. Such records and property shall be made available to the department for review at all reasonable times;

(2) In a reasonable manner, hold for inspection and take samples of any plants and associated materials which may not be in compliance with the act;

(3) Inspect or reinspect at any time or place any plants that are in the state or being shipped into or through the state and treat, seize, destroy, require treatment or destruction of, or return to the state of origin any plants in order to inhibit or prevent the movement of plant pests throughout the state;

(4) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 from a court of record if any person refuses to allow the department to inspect pursuant to this section;

(5) Issue a written or printed withdrawal-from-distribution order when the department has reasonable cause to believe any lot of nursery stock is being distributed in violation of the act or any rule or regulation;

(6) Apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond;

(7) Issue a quarantine or establish a quarantine area;

(8) Cooperate and enter into agreements with any person in order to carry out the purpose of the act;

(9) Establish a restricted plant pest list to prohibit the movement into the state of plant pests not known to occur in Nebraska and to prohibit the movement of those plant pests present in the state but known to be destructive to the plant industry;

(10) Issue phytosanitary certificates on plants for individual shipment to other states or foreign countries if those plants comply with the requirements or regulations of such state or foreign country;

(11) Inspect plants that any person desires to ship into another state or country when such person has made an application to the department for such inspection. The inspection shall determine the presence of plant pests to determine the acceptance of the plants into other states or countries. The department may accept the inspections of laboratories authorized by the department or field inspectors of the department;

(12) Certify plants or property to meet the requirements of specific quarantines imposed on Nebraska or Nebraska plants. The quarantine certification requirements shall be set forth in the rules and regulations;

(13) Assess and collect charges for inspections, services, or work performed in carrying out subdivisions (10) to (12) of this section. Such charges shall not exceed the actual cost of accomplishing such work. The department may for purposes of administering subdivisions (10) to (12) of this section establish in rules and regulations such items as charges, inspection requirements, standards, and issuance, renewal, or revocation of certificates or permits necessitated by such subdivisions; and

(14) Conduct continuing survey and detection programs on plant pests to monitor the population or spread of plant pests.

Sec. 21. All growers in the State of Nebraska shall conform to the following requirements:

(1) Each grower shall apply for a grower's license, on forms prescribed by the department, prior to March 15 for the following fiscal year. Each fiscal year shall begin on October 1. Any person making an initial application shall do so prior to beginning distribution. No person distributing greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, shall be required to obtain a grower's license;

(2) Each applicant for a grower's license shall furnish a signed written statement that such person shall acquire and further distribute only nursery stock which has been distributed by a person who is licensed by the department as a grower or dealer or approved by an authorizing agency within the state of origin recognized by the department. Every grower shall continually maintain a complete and accurate list with the department of all sources from which nursery stock is obtained;

(3) All grower's licenses shall expire on September 30 unless previously revoked;

(4) Prior to license issuance, all applicants shall submit an inspection fee, not to exceed twenty-five dollars per acre inspected, as set forth in the rules and regulations;

(5) Applications not received prior to April 15 and initial applications not received prior to beginning distribution shall be considered delinquent

and shall have an inspection fee of all actual costs assessed to the person making the application, not to exceed thirty-five dollars per acre inspected, fifty cents per mile traveled for the purpose of inspection, and twenty-five dollars per hour for travel and inspection time, as set forth in the rules and regulations;

(6) A copy of the valid grower's license shall be posted in a conspicuous place at the distribution location;

(7) Each grower shall keep and make available for examination by the department for a period of two years an accurate record of all transactions conducted in the ordinary course of business. Records pertaining to such business shall at a minimum include the names of the persons from which nursery stock was received, the receiving date, and the amount and variety of nursery stock; and

(8) Any grower who has a valid certificate issued by the department as of September 30, 1988, shall be deemed to be licensed by the department for purposes of the Plant Protection and Plant Pest Act. Such license shall expire on September 30, 1989, unless previously revoked.

Sec. 22. All growers within the state shall have their nursery inspected by the department at least once each year for compliance with the Plant Protection and Plant Pest Act.

Sec. 23. Upon inspection of a representative amount of nursery stock and the satisfaction of requirements prescribed in section 21 of this act, the department shall issue a grower's license, with any applicable restrictions prescribed in section 24 of this act, to the grower. Each grower shall be allowed one distribution location per valid grower's license. Each additional distribution location shall require a separate application, inspection, and license, with fees assessed as set forth in section 21 of this act. A person licensed as a grower shall not be required to obtain a separate dealer's license. A grower's license shall not be transferable to another person or another location.

Sec. 24. (1) Following the inspection, the department shall provide a copy of the plant inspection report to the grower specifying any area of the nursery from which nursery stock cannot be distributed or any plants which may not be distributed as nursery stock. When deemed necessary to maintain compliance with the purposes of the Plant Protection and Plant Pest Act, the

department shall require the grower to withdraw from distribution any variety or amount of nursery stock. A reinspection may be conducted by the department at the grower's request and cost. The department may also reinspect to determine compliance with the act. To determine the cost of any reinspection, the department shall use rates as outlined in subdivision (5) of section 21 of this act. The grower shall comply with the recommendations of the department as to the treatment or destruction of nursery stock.

(2) The department may require the treatment or destruction of any nursery stock that is infested or infected with plant pests, nonviable, damaged, or desiccated to the point of not being reasonably capable of growth.

(3) Any nursery stock on which a withdrawal-from-distribution order has been issued shall be released for distribution only by authorized department employees or after written permission has been obtained from the department. Each grower shall promptly report to the department, in writing, the amount and type of plants treated or destroyed under requirements on withdrawal-from-distribution orders. The department may withhold a grower's license until conditions have been met by the grower as specified in the plant inspection report or any other order issued by the department. A grower's license may be issued covering portions of the nursery which are not infested or infected if the grower agrees to treat, destroy, or remove as specified by the department those plants found to be infested or infected.

Sec. 25. All nursery stock distributed by any grower shall be only sound, healthy nursery stock that is reasonably capable of growth, labeled correctly, free from injurious plant pests, and stored or displayed under conditions which shall maintain its vigor as outlined in the rules and regulations.

Sec. 26. Every dealer shall conform to the following requirements:

(1) Each dealer shall apply for a dealer's license, on forms prescribed by the department, prior to December 31 for the following calendar year. Persons making an initial application shall do so prior to beginning distribution. No person distributing greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, shall be required to obtain a dealer's license;

(2) Each applicant for a dealer's license

shall furnish a signed written statement that such person shall acquire and further distribute only nursery stock which has been distributed by a person who is licensed by the department as a grower or dealer or approved by an authorizing agency within the state of origin recognized by the department. Every dealer shall continually maintain a complete and accurate list with the department of all sources from which nursery stock is obtained;

(3) A dealer's license shall expire on December 31 each year unless previously revoked;

(4) All applications shall be accompanied by a fee not to exceed one hundred dollars as set forth in the rules and regulations;

(5) Applications not received prior to February 1 and initial applications not received prior to beginning distribution shall be considered delinquent and shall have an additional delinquent fee assessed of twenty percent per month of the total amount of the fee for the license, not to exceed one hundred percent;

(6) A copy of the valid dealer's license shall be posted in a conspicuous place at the distribution location;

(7) Each dealer, including those who operate a mechanical digger, shall keep and make available for examination by the department for a period of two years an accurate record of all transactions conducted in the ordinary course of business. Records pertaining to such business shall at a minimum include the names of the persons from which nursery stock was received, the receiving date, the amount received, and the variety of nursery stock;

(8) Any dealer who is certified by the department as of September 30, 1988, shall be deemed to be licensed by the department for purposes of the Plant Protection and Plant Pest Act. Such license shall expire on December 31, 1988, unless previously revoked; and

(9) Every dealer distributing nursery stock from more than one location shall secure a dealer's license for each location from which nursery stock is distributed.

Sec. 27. The department may inspect nursery stock being distributed by any dealer at any time for care, viability, labeling, and the presence of plant pests.

Sec. 28. If the applicant satisfies the requirements as outlined in section 26 of this act, the department shall issue a dealer's license to the

applicant. A dealer's license shall not be transferable to another person or location.

Sec. 29. If upon inspection nursery stock is found to be nonviable, mislabeled, or infested or infected with plant pests, the department may specify any area of the distribution location from which nursery stock cannot be distributed or any plants at the distribution location which may not be distributed as nursery stock. A written or printed withdrawal-from-distribution order shall be issued identifying any nursery stock which cannot be distributed. A reinspection may be conducted by the department at the dealer's request and cost. The department may also reinspect to determine compliance with the act. To determine the cost of any reinspection, the department shall use rates as outlined in subdivision (5) of section 21 of this act. The dealer shall comply with the recommendations of the department as to the treatment or destruction of nursery stock. Each dealer shall promptly report to the department, in writing, the amount and type of plants treated or destroyed under requirements in withdrawal-from-distribution orders. Nursery stock on which such orders are placed by the department shall be released for distribution only by authorized department employees or after written permission has been obtained from the department.

Sec. 30. All nursery stock distributed by any dealer shall be only sound, healthy nursery stock that is reasonably capable of growth, labeled correctly, free from injurious plant pests, and stored or displayed under conditions which shall maintain its vigor as outlined in rules and regulations.

Sec. 31. Collectors shall be required to obtain a grower's license and shall be subject to all the requirements that apply to the inspection of nursery stock. All collected nursery stock shall be labeled as such.

Sec. 32. (1) The department may suspend or withhold any license or place the licensee on probation with the imposition of corrective actions to be taken by such licensee whenever it has reason to believe that:

(a) The license has been used for the further distribution of nursery stock obtained from an unlicensed grower or dealer;

(b) The license is being used by any person other than the person to whom it was issued;

(c) The licensee has failed to comply with the Plant Protection and Plant Pest Act and the rules and

regulations:

- (i) In the care of nursery stock;
- (ii) In the distribution of nursery stock including nursery stock that has been withdrawn from distribution;
- (iii) Regarding treatment or destruction of nursery stock as required by a withdrawal-from-distribution order; or
- (iv) In maintaining the nursery stock in a manner accessible to the department; or
- (d) The licensee has committed any other violation of the act.

(2) The department shall in all cases, except when an imminent hazard to the public health, safety, or welfare exists or in any case of a willful refusal to permit an authorized inspection, serve upon the applicant or licensee a written notice of intent to suspend or withhold the license or place the licensee on probation. Such notice shall specify the violation in question and may provide such person a reasonable opportunity to correct such violation before making any order of withholding, probation, or suspension effective. An opportunity for a hearing before the department on this matter shall be provided. Any withholding, probation, or suspension shall remain in effect until the violation has been corrected to the satisfaction of the department.

(3) Upon repeated or serious violations of the act, the department may revoke a license following reasonable notice to the licensee and an opportunity for a hearing. This section is not intended to preclude the institution of any court action as provided in the act.

Sec. 33. (1) Any person residing outside the state and desiring to solicit orders or distribute nursery stock in Nebraska may do so if:

(a) Such person is duly licensed under the nursery laws of the state where the nursery stock originates and the laws of that state are essentially equivalent to the laws of Nebraska as determined by the department; and

(b) Such person complies with the Plant Protection and Plant Pest Act and the rules and regulations on all nursery stock distributed in Nebraska.

(2) The department may cooperate with and enter into reciprocal agreements with other states regarding licensing and movement of nursery stock. Reciprocal agreements with other states shall not prevent the department from prohibiting the distribution

in Nebraska of nursery stock which fails to meet the minimum criteria for nursery stock of Nebraska-licensed growers, dealers, or both.

Sec. 34. (1) Optional inspections of plants may be conducted by the department upon request by any persons desiring such inspection. A fee as set forth in subdivision (5) of section 21 of this act shall be charged for such an inspection.

(2) Any person who desires a grower's license for any greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, may apply for such license to the department. The inspection of such plants shall conform to the same requirements that apply to the inspection of nursery stock as set forth in sections 21 to 25 of this act. For persons who grow or distribute both nursery stock and greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, one license shall be issued if the annual inspection of such plants is conducted concurrently with the nursery stock inspection and the other requirements of the Plant Protection and Plant Pest Act are met. If an additional inspection trip is required, the applicant shall be assessed an additional fee as outlined in subdivision (5) of section 21 of this act.

Sec. 35. (1) It shall be unlawful for any person, including any carrier transporting nursery stock, to bring into or cause to be brought into Nebraska any nursery stock unless such shipment is plainly and legibly marked with a label showing the name and address of the consignor and consignee, the nature and quantity of the contents, the place of origin, and the license or its equivalent issued by the recognized authorizing agency stating that the nursery from which the nursery stock originates has been inspected.

(2) It shall be unlawful for any person to distribute in Nebraska nursery stock for the purpose of resale in Nebraska without meeting the labeling criteria stated in this section.

(3) The requirements of this section shall not apply to nursery stock distributed to the final consumer at a distribution location where a valid grower's or dealer's license has been conspicuously posted.

(4) The department may cause to be held for inspection any plants, regardless of proper labeling according to the Plant Protection and Plant Pest Act, if there is reason to believe it is infested or infected

with plant pests. Such plants shall be held only for a period of time reasonable for proper inspection and any treatment deemed necessary by the department. The department shall not be held responsible for costs incurred by treatment or delay.

(5) In carrying out this section, the department may intercept or detain any person or property including vehicles or vessels reasonably believed to be carrying any plants or any other articles capable of carrying plant pests. The department may hold for treatment, destroy, or otherwise dispose of any plants, if found infested or infected with plant pests, at the owner's cost.

Sec. 36. Any person owning or controlling property shall keep such property free from all species of plants declared by the department to be nuisance plants. If the department determines that any species or variety of plant is a nuisance plant and that such plant should be eradicated in order to safeguard the agricultural interests of the state, the department shall give public notice of proposed eradication by publication in one or more newspapers of general circulation throughout the area over which such nuisance plant exists, designating the species or variety in question, the proposed eradication area, and the reasons for the eradication. Such notice shall designate a place and time for a public hearing at which all interested parties may be heard. After such hearing has been held, the department may cause to be served by first-class mail individual notices upon the owner of record of such land at that person's last-known address stating (1) that the species or variety of plant is a nuisance plant and (2) that the department is authorized to destroy or order the destruction of such plant. It shall be the duty of every person affected by the notice to use measures of arrest and control required of such person by the instructions of the department.

Sec. 37. (1) Whenever the department finds that there exists, in any other state, territory, country, or part thereof, any plant pests detrimental to the agricultural interests of the state and that the control, eradication, retarding, or prevention of such pests is necessary to protect the plant industry of the state, the department may impose and enforce a quarantine prohibiting the transportation into, within, or through Nebraska of such pests. Quarantine enforcement shall apply to any plants or any other property capable of carrying such plant pests regardless of whether the plants are distributed by a person

holding a valid license or its equivalent issued by an authorizing agency within the state of origin recognized by the department. Nursery stock and all other plants shall be subject to any quarantine measures deemed necessary by the department.

(2) When it has been determined that an area of the state is infected or infested with plant pests which may be detrimental to the agricultural interests of the state, such area may be quarantined by the department. Under such quarantine the department may restrict or prevent the movement or transportation of any plants or any other property capable of carrying such plant pests originating in or having been maintained in any area infested or infected with such plant pests. Public notice of any quarantine shall be given by the department by publication in one or more newspapers in circulation within the area of the state affected by such order.

(3) Any plants or other property moved or transported in violation of a quarantine imposed pursuant to this section may be seized, treated, destroyed, or returned to the state of origin without compensation by the department.

Sec. 38. If the department finds that plants are distributed in violation of the Plant Protection and Plant Pest Act, the department may issue a written or printed withdrawal-from-distribution order to the person in charge of such plants for the protection of the public health, safety, or welfare and may enforce such order. Such an order shall specify the nature of each violation and the precise action required to bring the plants into compliance with the applicable provisions of the act. Such an order shall advise the person that he or she may request an immediate hearing before the department on the specified violation.

The department may issue a withdrawal-from-distribution order on plants that are perishable, even if the result of such order will bring about the involuntary disposal of such items, when, in the opinion of the person issuing such order, no alternative course of action would sufficiently protect the public health, safety, or welfare under the circumstances.

Sec. 39. The department may cooperate and enter into agreements with the United States Department of Agriculture or any other federal or state agency in the implementation or enforcement of the Plant Protection and Plant Pest Act and the 1944 Organic Act of Congress, as amended, on the operative date of this

section.

Sec. 40. All costs associated with a withdrawal-from-distribution order or the quarantine, treatment, or destruction of plants shall be incurred by the owner of such plants. The department shall not be liable for any actual or incidental costs incurred by any person due to such departmental actions. The department shall be reimbursed by the owner of such plants for the actual expenses incurred by it in carrying out a withdrawal-from-distribution order or the quarantine, treatment, or destruction of any plants.

Sec. 41. If the department determines that any fee has been erroneously collected or computed, the department shall credit the excess amount collected or paid to any fees then due and owing from the person under the Plant Protection and Plant Pest Act. Any remaining balance may be refunded to the person by whom it was paid.

Sec. 42. (1) Any person receiving any shipment of nursery stock from any foreign country that has not been inspected and released by the United States Department of Agriculture at the port of entry shall notify the department of the arrival of such shipment, its contents, and the name of the consignor. Such person shall hold the shipment unopened until inspected or released by the department.

(2) No person shall import or cause to be brought into Nebraska any soils or plant pests for research purposes or other educational uses without permission from the department.

(3) No person shall import or cause to be brought into Nebraska any biological control agent without a permit as set forth in rules and regulations. Such rules and regulations may provide for reasonable exemptions from permit requirements. Permits may be issued only after the department determines that the proposed shipment or use will not create sufficient hazard to warrant the refusal of a permit.

Sec. 43. In construing and enforcing the Plant Protection and Plant Pest Act, omission or failure of any individual acting for or employed by any other person or other principal within the scope of his or her employment or office shall in every case be deemed the act, omission, or failure of such person or other principal as well as that of the individual.

Sec. 44. (1) Any person shall be guilty of a Class IV misdemeanor for the first violation and a Class II misdemeanor for any subsequent violation of the same nature if that person:

(a) Distributes nursery stock and has not been duly licensed under the Plant Protection and Plant Pest Act;

(b) Receives nursery stock for further distribution from any person who has not been duly licensed or approved under the act;

(c) Uses any license issued by the department after it has been revoked or has expired, while the licensee was under suspension, or for purposes other than those authorized by the act;

(d) Offers any hindrance or resistance to the department in the carrying out of the act, including, but not limited to, denying or concealing information or denying access to any property relevant to the proper enforcement of the act;

(e) Allows any plant declared a nuisance plant as outlined in section 36 of this act to exist on such person's property or distributes any such plants or materials capable of harboring plant pests;

(f) Is licensed as a grower or dealer and:

(i) Fails to comply with provisions for treatment or destruction of nursery stock as required by withdrawal-from-distribution orders;

(ii) Distributes any quarantined nursery stock or nursery stock for which a withdrawal-from-distribution order has been issued; or

(iii) Distributes nursery stock for the purpose of further distribution to any person in Nebraska not licensed as a grower or dealer;

(g) Distributes nursery stock which is not sound, healthy, reasonably capable of growth, labeled correctly, and free from injurious plant pests;

(h) Distributes plants which have been quarantined or are in a quarantined area;

(i) Violates any item set forth as unlawful in section 35 of this act; or

(j) Violates any other provision of the Plant Protection and Plant Pest Act.

(2) Any lot or shipment of plants not in compliance with the Plant Protection and Plant Pest Act and the rules and regulations shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the county in which such plants are located. If the court finds the plants to be in violation of the act and orders the condemnation of the plants, such plants shall be disposed of in any manner deemed necessary by the department. In no instance shall the disposition of the plants be ordered by the court without first giving the claimant an

opportunity to apply to the court for release of such plants or for permission to treat or relabel the plants to bring such plants into compliance with the act.

(3) It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of a violation or threatened violation, to institute appropriate proceedings, either criminal, injunctive, or both, without delay. Before the department reports a violation, an opportunity shall be given to the person against whom proceedings will be brought to present such person's views to the department as set forth in the Administrative Procedure Act.

(4) Any person adversely affected by an order made by the department pursuant to the Plant Protection and Plant Pest Act may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 45. The department shall have authority to adopt and promulgate such rules and regulations as are necessary to the effective discharge of its duties under the Plant Protection and Plant Pest Act. The rules and regulations may include, but shall not be limited to, provisions governing:

(1) The issuance and revocation of licenses as authorized by the Plant Protection and Plant Pest Act;

(2) The assessment and collection of license, inspection, and delinquent fees;

(3) The withdrawal from distribution of nursery stock;

(4) The care, viability, and standards for nursery stock;

(5) The labeling and shipment of nursery stock;

(6) The issuance and release of plant pest quarantines and withdrawal-from-distribution orders;

(7) The establishment of a restricted plant pest list;

(8) The preparation, maintenance, handling, and filing of reports by persons subject to the act; and

(9) The adoption of the American Association of Nurserymen's American Standard for Nursery Stock insofar as it does not conflict with any provision of the act.

Sec. 46. All money received from any source pursuant to the Plant Protection and Plant Pest Act shall be remitted by the department to the State Treasurer and by the State Treasurer credited to the Plant Protection and Plant Pest Cash Fund which is

hereby created. The fund shall be used by the department to aid in defraying the expenses of administering the Plant Protection and Plant Pest Act. Any money in the Insect Pest and Plant Disease Administrative Cash Fund on the operative date of this section shall be transferred to the Plant Protection and Plant Pest Cash Fund. Any money in the Plant Protection and Plant Pest Cash Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 47. This act shall become operative on October 1, 1988.

Sec. 48. 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. 49. That sections 2-1001 to 2-1015, 2-1021 to 2-1038, and 2-1046 to 2-1059, Reissue Revised Statutes of Nebraska, 1943, and sections 2-1016, 2-1017, and 2-1019 to 2-1020, Revised Statutes Supplement, 1986, are repealed.