

LEGISLATIVE BILL 267

Approved by the Governor April 22, 1993

Introduced by Agriculture Committee: Dierks, 40, Chairperson;
Cudaback, 36; Haberman, 44; Hudkins, 21;
Schellpeper, 18; Vrtiska, 1

AN ACT relating to agriculture; to amend sections 54-701, 54-703 to 54-705, 54-742 to 54-747, 54-750, 54-790, 54-791, and 81-202, Reissue Revised Statutes of Nebraska, 1943, sections 2-4325, 54-859, 54-2240, 54-2244, 54-2254, 54-2263, 54-2275, 54-2276, 54-2290, 54-2295, 54-2299, 81-2,162.07, 89-186, 89-187, 89-197, and 89-198, Revised Statutes Supplement, 1992, and sections 3, 8, and 14, Legislative Bill 588, Ninety-third Legislature, First Session, 1993; to change provisions relating to inspections and samples as prescribed; to change provisions relating to protection of the health of certain animals and livestock as prescribed; to authorize certain composting; to change provisions relating to certain violations; to define and redefine terms; to change provisions relating to pseudorabies; to change provisions relating to weights and measures as prescribed; to change provisions relating to the registration and distribution of pesticides; to harmonize provisions; to provide operative dates; and to repeal the original sections, and also sections 54-702 and 54-789, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 2-4325, Revised Statutes Supplement, 1992, be amended to read as follows:

2-4325. (1) To enforce the Agricultural Liming Materials Act or the rules and regulations adopted pursuant to the act, the director may:

(a) For purposes of inspection, enter any location, vehicle, or both in which agricultural liming materials are manufactured, processed, packed, transported, or held for distribution during normal business hours, except that in the event such locations and vehicles are not open to the public, the director shall present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained. Credentials shall not be required for each entry made during the period covered by the inspection. The person in charge of the location or vehicle shall be notified of the completion of the inspection. If the owner of such location or vehicle or his or her agent refuses to admit the director to inspect pursuant to this section, the director may obtain a search warrant from a court of competent

jurisdiction directing such owner or agent to submit the location, vehicle, or both as described in such search warrant to inspection;

(b) Inspect any location or vehicle described in this subsection, all pertinent equipment, finished and unfinished materials, containers and labeling, all records, books, papers, and documents relating to the distribution and production of agricultural liming materials, and other information necessary for the enforcement of the act;

(c) Obtain samples of agricultural liming materials. The owner, operator, or agent in charge shall be given a receipt describing the samples obtained; and

(d) Make analyses of and test samples obtained pursuant to subdivision (c) of this subsection to determine whether such agricultural liming materials are in compliance with the act.

For purposes of this subsection, location shall include a factory, warehouse, or establishment. It shall be the duty of the director or his or her duly authorized agent to sample, inspect, make analyses of, and test agricultural liming materials distributed within this state as he or she may deem necessary to determine whether such agricultural liming materials are in compliance with the Agricultural Liming Materials Act. The director or his or her duly authorized agent is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to agricultural liming material regulated by the act and by the rules and regulations adopted pursuant thereto and to have access to the records relating to such material's distribution.

(2) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International or in accordance with other generally recognized methods.

(3) The results of official analyses of agricultural liming materials and portions of official samples shall be distributed by the department as provided in the rules and regulations, at least annually.

Sec. 2. For purposes of sections 54-701 to 54-705 and 54-742 to 54-753.05:

(1) Animal shall mean all vertebrate members of the animal kingdom except humans or uncaptured wild animals; and

(2) Livestock shall mean cattle, swine, sheep, horses, goats, and poultry.

Sec. 3. That section 54-701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-701. The Department of Agriculture shall be vested with the power and charged with the duties of protecting the health of livestock in Nebraska, of and determining and employing the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, infectious, contagious, or otherwise transmissible diseases among domestic animals, and, to livestock. To that end, the department may place ~~of placing~~ in quarantine any county or part of any county, or any private premises, or any private or public stockyards; and of quarantining may quarantine any domestic animal or animals animal infected with such disease; or which have has

been; or ~~are~~ is suspected of having been; exposed to infection therefrom, ~~and of killing~~ may kill any animal so infected, and ~~of regulating or prohibiting~~ may regulate or prohibit the arrival into and departure from and movement within the state of ~~animals~~ any animal infected with such disease or exposed or suspected of having been exposed; to the cause, infection, or contagion therefrom. ~~At~~ ~~and at~~ the cost of the owner, ~~the department may detain any~~ ~~of detaining any~~ ~~domestic~~ animal found in violation of any departmental or statutory regulation or prohibition. ~~The department may adopt,~~ ~~and to~~ promulgate, ~~adopt~~ and enforce such reasonable rules and regulations as may be necessary ~~or proper~~ for the supervision and control of manufactured and refined food for animals to ~~the end of preventing~~ prevent deleterious substances being present in human foods of animal origin and the manufacture, importation, sale, and storage of any biological material including semen, remedy, or curative agent for use on or in ~~animals~~ any animal that may be capable of causing or spreading disease; ~~;~~ ~~PROVIDED, that as~~ ~~and as~~ far as practicable ~~the~~ such rules and regulations approved by the United States Department of Agriculture shall be adopted. All of the powers and duties of the department with reference to the protection of the health of ~~domestic animals~~ livestock shall be exercised by and through the Bureau of Animal Industry.

Sec. 4. That section 54-703, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-703. (1) The Department of Agriculture and all inspectors and persons appointed and authorized to assist in the work of such department shall enforce the provisions of sections 54-701 to 54-753.05 as designated. The Department of Agriculture

(2) The department and any officer, agent, employee, or appointee of the department shall have the right to enter upon the premises of any person who has, or is suspected of having, any domestic animal or animals animal thereon, for the purpose of making any and all inspections, examinations, tests, and treatments of such ~~animals~~ animal, and to declare, carry out, and enforce any and all quarantines.

(3) The department shall further adopt and promulgate such rules and regulations as are necessary to promptly and efficiently enforce and effectuate the general purpose and provisions of such sections.

Sec. 5. That section 54-704, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-704. Any veterinary inspector or agent of the United States ~~Bureau of Animal Industry~~ Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, who has been officially assigned by the ~~bureau~~ department for service in Nebraska; may be officially authorized by the Department of Agriculture to perform and exercise such powers and duties as may be prescribed by the department; and when so authorized shall have and exercise all rights and powers vested by sections 54-701 to 54-753 54-753.05 in agents and representatives in the regular employ of the department.

Sec. 6. That section 54-705, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-705. The Department of Agriculture or any officer, agent, employee, or appointee thereof shall have power to call upon any sheriff, deputy sheriff, or other police officer to execute the orders of the department, and the officer shall obey the orders of the department. The officers performing such duties shall receive compensation therefor as is prescribed by law for like services and shall be paid therefor by the county. Any officer may arrest and take before the county judge of the county any person found violating any of the provisions of sections 54-701 to ~~54-753~~ 54-753.05, and such officer shall immediately notify the county attorney of such arrest. ~~The~~ and such county attorney shall ~~proceed to~~ prosecute the person so offending according to law.

Sec. 7. That section 54-742, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-742. It shall be the duty of any person who discovers, suspects, or has reason to believe that any ~~domestic~~ animal belonging to him; or her or which he or she has in his or her possession or custody; or which, belonging to another, may come under his or her observation; is affected with any dangerous, infectious, contagious, or otherwise transmissible disease; which affects livestock to immediately report such fact, belief, or suspicion to the Department of Agriculture or to any agent, employee, or appointee thereof.

Sec. 8. That section 54-743, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-743. It shall be the duty of the owner or the custodian of any ~~domestic~~ animal killed by order of the Department of Agriculture to dispose of the carcass ~~thereof~~ in the manner prescribed by the department, and whenever the owner or custodian of any such animal so killed is unknown; or absent from the premises where such carcass may be, the carcass shall be disposed of in like manner at the expense of the county in which the carcass is located.

Sec. 9. That section 54-744, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-744. ~~It~~ (1) Except as set out in subsection (2) of this section, it shall be the duty of the owner or custodian of any ~~domestic~~ animal; which dies from and on account of any infectious, contagious, or otherwise transmissible disease; to cause such animal, within thirty-six hours after receiving knowledge of the death of such animal, to be buried at least four feet below the surface of the ground; or to be completely burned on the premises where such animal dies; unless the animal is disposed of to a duly licensed rendering establishment in this state. Such ~~;~~ ~~Provided, such~~ animal shall not be moved or transported from the premises where such animal has died except by the authorized agents and employees of the rendering establishment to which such carcass is disposed. Any animal which dies of disease; or is found dead; shall be presumed to have died from and on account of an infectious, contagious, or otherwise transmissible disease.

(2) Chicken and turkey carcasses may be incorporated into a composting facility on the premises where the chickens or turkeys died and shall remain in such compost facility until completely composted before spreading on land.

Sec. 10. That section 54-745, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-745. It is hereby made the duty of the sheriff of each county to cause to be buried the carcasses of any animal ~~all domestic animals~~ remaining unburied or otherwise disposed of; after notice that any such carcass has remained unburied in violation of the provisions of section 54-744. The sheriff ~~is hereby authorized to~~ may enter upon any premises where any such ~~carcasses are~~ carcass is for the purpose of carrying out the provisions of this section; and may cause such carcass ~~or carcasses~~ to be buried on such premises, but no such carcass shall be buried within a distance of five hundred feet of any dwelling house or barn. The board of county commissioners or supervisors shall allow such sums for ~~such the~~ such sums services as it may deem reasonable, and ~~the same~~ such sums shall be paid to the persons rendering ~~such the~~ such the services upon vouchers, as other claims against the county are paid. The owner of such animal ~~or animals~~ shall be liable to the county for the expense of such burial, to be recovered in a civil action, unless the owner ~~thereof~~ pays such expenses within thirty days after notice and demand therefor.

Sec. 11. That section 54-746, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-746. No person shall ship, trail, drive, or otherwise move, ~~or~~ permit to be moved, or permit to be driven from one county in the state to any other county in the state, ~~or~~ from one part of a county to another, or to any other state; any ~~domestic animal or animals~~ animal which ~~are~~ is affected; or suspected of being affected; with any dangerous, infectious, contagious, or otherwise transmissible disease; without first having obtained a permit from the Department of Agriculture therefor.

Sec. 12. That section 54-747, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-747. Whenever any ~~domestic~~ animal has been adjudged to be affected with any infectious, contagious, or otherwise transmissible disease, other than a disease for which specific legislation exists, and has been ordered killed, the owner or custodian thereof shall be notified of such finding and order. Within forty-eight hours thereafter, such owner or custodian may file a protest with the Department of Agriculture; stating under oath that to the best of his ~~or her~~ knowledge and belief such animal is free from such infectious, contagious, or otherwise transmissible disease. Thereupon, an examination of the animal involved shall be made by three veterinarians, graduates of a college of veterinary medicine which has been approved by the Department of Health as a preliminary qualification for admission to practice veterinary medicine in the state. One of such veterinarians shall be appointed by the department, one by the person making such protest, and the two thus

appointed shall choose the third. In case all three veterinarians; or any two of them; find such animal to be free from such infectious, contagious, or otherwise transmissible disease, the expense of such examination shall be paid by the state. In case the three veterinarians; or any two of them; find such animal to be affected with such infectious, contagious, or otherwise transmissible disease, the expense of the examination shall be paid by the person making the protest. The department and the person making such protest shall be bound by the result of such examination.

Sec. 13. That section 54-750, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-750. It shall be unlawful for any person to knowingly harbor, sell, or otherwise dispose of; any ~~domestic~~ animal or any part thereof affected with an infectious, contagious, or otherwise transmissible disease; except as provided by sections 54-701 to 54-753, and the rules and regulations prescribed by the Department of Agriculture thereunder. Any person so offending shall be deemed guilty of a Class II misdemeanor.

Sec. 14. That section 54-790, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-790. It shall be unlawful for any person to bring, cause to be brought, or aid in bringing into this state any animal which is not accompanied by ~~either~~ a health certificate ~~or waybill~~ as provided in ~~sections section 54-788, and 54-789.~~

Sec. 15. That section 54-791, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-791. It shall be unlawful for any person to cause any animal to be diverted from the destination stated on ~~either~~ the health certificate ~~or waybill~~ as required by ~~sections section 54-788 and 54-789,~~ except by permit issued by the bureau.

Sec. 16. That section 54-859, Revised Statutes Supplement, 1992, be amended to read as follows:

54-859. (1) To enforce the Commercial Feed Act or the rules and regulations adopted pursuant to the act, the director may:

(a) For purposes of inspection, enter any location, vehicle, or both in which commercial feed is manufactured, processed, packed, transported, or held for distribution during normal business hours, except that in the event such locations and vehicles are not open to the public, the director shall present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained. Credentials shall not be required for each entry made during the period covered by the inspection. The person in charge of the location or vehicle shall be notified of the completion of the inspection. If the owner of such location or vehicle or his or her agent refuses to admit the director to inspect pursuant to this section, the director may obtain a search warrant from a court of competent jurisdiction directing such owner or agent to submit the location, vehicle, or both as described in such search warrant to inspection;

(b) Inspect any location or vehicle described in this subsection, all pertinent equipment, finished and unfinished materials, containers and labeling, all records, books, papers, and documents relating to the distribution of commercial feed, production and control procedures to determine compliance with the federal Good Manufacturing Practice Regulations, and other information necessary for the enforcement of the act;

(c) Obtain samples of commercial feed. The owner, operator, or agent in charge shall be given a receipt describing the samples obtained; and

(d) Make analyses of and test samples obtained pursuant to subdivision (c) of this subsection to determine whether such commercial feed is in compliance with the act.

For purposes of this subsection, location shall include a factory, warehouse, or establishment.

~~For the purpose of enforcement of the Commercial Feed Act and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees authorized by the director, upon presenting appropriate credentials and notice to the owner, operator, or agent in charge, are authorized (a) to enter during normal business hours any factory, warehouse, or establishment in which commercial feed is manufactured, processed, packed, or held for distribution or to enter any vehicle being used to transport or hold such feed and (b) to inspect at reasonable times and within reasonable limits and in a reasonable manner such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. The inspection may include the verification of only such records and production and control procedures as may be necessary to determine compliance with the federal Good Manufacturing Practice Regulations.~~

~~(2) Credentials shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.~~

~~(3) If the officer or employee making such inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he or she shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.~~

~~(4) If the owner of any factory, warehouse, or establishment or his or her agent refuses to admit the director to inspect pursuant to this section, the director may obtain a warrant from a court of competent jurisdiction directing such owner or his or her agent to submit the premises described in such warrant to inspection.~~

~~(5) The director may enter upon any public or private premises, including any vehicle of transport, during regular business hours to obtain samples and to examine records relating to the distribution of~~

commercial feed:

(6) (2) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International or in accordance with other generally recognized methods.

(7) (3) The results of all analyses of official samples shall be forwarded by the director to the person named on the label. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty ninety days following receipt of the analysis, the director shall furnish to the person named on the label a portion of the sample concerned. Following expiration of the ninety-day period, the director may dispose of such sample.

(8) (4) The director, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample obtained and analyzed pursuant to this section.

Sec. 17. That section 54-2240, Revised Statutes Supplement, 1992, be amended to read as follows:

54-2240. Affected premises shall mean land on which is located an affected swine herd and shall include the buildings and equipment located on such land.

Sec. 18. That section 54-2244, Revised Statutes Supplement, 1992, be amended to read as follows:

54-2244. Circle testing shall mean testing of a random sample of each swine herd located within one mile of the affected premises if in a Stage II status area and within one and one-half miles if in a Stage III status area.

Stage II and Stage III status areas are established pursuant to the Part III Program Stages and Requirements of the State-Federal-Industry Program Standards for Pseudorabies Eradication as approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, existing on March 1, 1993.

Sec. 19. That section 54-2254, Revised Statutes Supplement, 1992, be amended to read as follows:

54-2254. Official test shall mean any testing procedure recognized for use in the diagnosis of pseudorabies by (1) the United States Department of Agriculture and existing as of January 1, 1991, March 1, 1993, in 9 C.F.R. part 85 or (2) the department in rules and regulations adopted and promulgated pursuant to the Pseudorabies Control and Eradication Act.

Sec. 20. That section 54-2263, Revised Statutes Supplement, 1992, be amended to read as follows:

54-2263. Status swine herd shall mean a swine herd which has been given a title approved and assigned by the department according to the pseudorabies disease condition of the swine herd. Titles given to status swine herds shall include, but not be limited to: (1) Qualified pseudorabies negative herd; (2) qualified negative gene-altered vaccinated

herd; (3) pseudorabies monitored herd; ~~and~~ (4) pseudorabies negative assessment ~~tested~~ herd; and (5) qualified pseudorabies negative offspring herd.

Sec. 21. That section 54-2275, Revised Statutes Supplement, 1992, be amended to read as follows:

54-2275. A swine herd which is not a status swine herd and which has been determined not to be an affected swine herd during the initial part of the assessment period shall be assigned the title of pseudorabies negative assessment ~~tested~~ herd by the department.

Sec. 22. That section 54-2276, Revised Statutes Supplement, 1992, be amended to read as follows:

54-2276. Any swine herd determined to be an affected swine herd by the department and any swine herd for which the owner refuses to comply with the Pseudorabies Control and Eradication Act or any rules and regulations adopted and promulgated thereto shall be put under quarantine by the department, and a swine herd cleanup plan shall be filed pursuant to section 54-2277.

Sec. 23. That section 54-2290, Revised Statutes Supplement, 1992, be amended to read as follows:

54-2290. The department shall adopt and promulgate rules and regulations to aid in implementing the Pseudorabies Control and Eradication Act. The rules and regulations may include, but shall not be limited to, provisions governing:

(1) The conduct of the feeder and breeding swine testing program, including provisions governing: (a) When, where, how, by whom, and how often testing is to be done; (b) what swine are to be subjected to testing; (c) how and by whom results of testing are to be recorded; (d) by whom and to whom the results of the testing are to be reported; and (e) how, by whom, and for what purposes such results will be utilized;

(2) The conduct of the pseudorabies control and eradication program, including provisions governing: (a) When, where, how, by whom, and how often testing is to be done; (b) what swine are to be subjected to testing; (c) requirements of swine herd cleanup plans, including form, execution, contents, duration, amendments, and enforcement; (d) how and by whom results of testing are to be recorded; (e) by whom and to whom the results of the testing are to be reported; (f) how, by whom, and for what purposes such results will be utilized; and (g) assignment of and requirements for titles for status swine herds and the suspension and cancellation of such titles;

(3) The conduct of surveillance in swine herds and at slaughter establishments and concentration points, including provisions governing: (a) When, where, how, by whom, and how often testing is to be done; (b) what swine and swine herds are to be subjected to testing; (c) how and by whom results of testing are to be recorded and reported; and (d) the use of the results of testing by the department;

(4) Importation of swine, including provisions governing: (a) Age, origin, entry, movement, and destination in the state; (b) when,

where, how, by whom, and how often imported swine are to be subjected to testing; (c) what imported swine are to be subjected to testing; and (d) how testing results are to be recorded, reported, and utilized;

(5)(a) What constitutes a program area; (b) what epidemiological factors will be considered in determining the program area; and (c) when and for what purpose a program activity will be selected;

(6) The issuance and release of quarantines and the requirements regarding the handling, movement, and disposition of livestock under quarantine;

(7) The cleaning and disinfecting of affected premises, including provisions governing: (a) The materials to be used; (b) the procedures to be used; and (c) when such procedures are to be performed;

(8) The testing of livestock to detect pseudorabies, including provisions governing: (a) Which tests are to be deemed official tests; (b) by whom the testing is to be administered; (c) how the testing is to be conducted; (d) the reaction tolerances to be recognized; and (e) the classification of results as to negative, suspect, or positive. These rules and regulations shall be consistent with the best available scientific information relative to the control and eradication of pseudorabies;

(9) The pseudorabies vaccination program, including provisions governing: (a) The vaccines to be used; (b) the age of the swine to be vaccinated; (c) the effect of vaccination on the interpretation of test results; and (d) the reported sale and use of vaccine;

(10) The identification of swine subject to the act, including provisions governing: (a) Exposed and infected swine; (b) vaccinated swine; and (c) swine to be tested;

(11) Classification of concentration points, including provisions governing: (a) Use and time of use of common areas by swine from (i) a swine herd under quarantine, (ii) swine from a status swine herd, and (iii) swine from a herd which is not a status swine herd; (b) the degree of separation of the swine described in subdivisions (a)(i) through (iii) of this subdivision; and (c) purposes for which swine exit the concentration point;

(12) Criteria and restrictions for approved breeding facilities, approved feeding facilities, and restricted premises, including provisions governing: (a) Epidemiological investigation of the swine herd; (b) adjoining land characteristics; (c) proximity of other livestock; (d) benefit of approved breeding facilities to the state; and (e) other factors which make approved breeding facilities, approved feeding facilities, or restricted premises detrimental to the livestock industry of the state;

(13) Random sampling of swine herds, including provisions governing: (a) When, where, how, by whom, and how often a random sample is to be used in testing swine herds; (b) when and for what purpose a random sample of a swine herd will be subjected to testing; (c) the number of feeder, breeding, and other swine in a particular status swine herd or in a swine herd which is not a status swine herd constituting a random sample to be subjected to testing; (d) the age of swine in a status

swine herd and a swine herd which is not a status swine herd to be used as a random sample and subjected to testing; and (e) how testing results are to be recorded, reported, and utilized;

(14) Compliance with Part III Program Stages and Requirements of the State-Federal-Industry Program Standards for Pseudorabies Eradication; as approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, existing on ~~January 1, 1991~~ March 1, 1993;

(15) Compliance with 9 C.F.R. part 85 existing on ~~January 1, 1991~~ March 1, 1993, for pseudorabies control and eradication;

(16) Administration of the pseudorabies control and eradication program subject to the availability of state funds;

(17) The assessment and collection of costs for services provided and expenses, not to exceed actual costs, incurred under the act;

(18) The preparation, maintenance, handling, filing, and disposition of records and reports by persons subject to the act concerning the vaccination, testing, or movement of swine;

(19) Program activities and cleanup testing under the act on which state funds, if appropriated and available, shall be used by the department and limitations on use of such state funds for testing and other activities under the act; and

(20) Any other areas deemed necessary by the department to effectively control and eradicate pseudorabies.

Sec. 24. That section 54-2295, Revised Statutes Supplement, 1992, be amended to read as follows:

54-2295. (1) Any person subject to the Pseudorabies Control and Eradication Act shall for two years keep on and file records or make reports pertaining to vaccination, testing, and movement of livestock infected with or exposed to or suspected of being infected with or exposed to pseudorabies. Such person shall ~~infected with or exposed to pseudorabies and keep on and file any other records or make any other reports the department deems necessary to enforce such act.~~

(2) Any person subject to the act shall, at all reasonable times, provide access to all records and reports to the department and its representatives for the purpose of examining and copying such records and reports necessary to enforce the act.

Sec. 25. That section 54-2299, Revised Statutes Supplement, 1992, be amended to read as follows:

54-2299. In administering the Pseudorabies Control and Eradication Act and conducting program activities authorized by the act, the department shall as far as reasonably practical conform its program activities to Part III Program Stages and Requirements of the State-Federal-Industry Program Standards for Pseudorabies Eradication as approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, existing on ~~January 1, 1991~~ March 1, 1993.

Sec. 26. That section 81-202, Reissue Revised Statutes of

Nebraska, 1943, be amended to read as follows:

81-202. Within the Department of Agriculture there shall be a Bureau of Animal Industry, with the State Veterinarian in charge, subordinate only to the Director of Agriculture. The powers and duties of the department provided by law for the protection of the health of ~~domestic animals~~ livestock as defined in section 2 of this act shall be exercised and discharged through the Bureau of Animal Industry under the direction of the State Veterinarian.

Sec. 27. That section 81-2,162.07, Revised Statutes Supplement, 1992, be amended to read as follows:

81-2,162.07. (1) To enforce the Nebraska Commercial Fertilizer and Soil Conditioner Act or the rules and regulations adopted pursuant to the act, the director may:

(a) For purposes of inspection, enter any location, vehicle, or both in which commercial fertilizers and soil conditioners are manufactured, processed, packed, transported, or held for distribution during normal business hours, except that in the event such locations and vehicles are not open to the public, the director shall present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained. Credentials shall not be required for each entry made during the period covered by the inspection. The person in charge of the location or vehicle shall be notified of the completion of the inspection. If the owner of such location or vehicle or his or her agent refuses to admit the director to inspect pursuant to this section, the director may obtain a search warrant from a court of competent jurisdiction directing such owner or agent to submit the location, vehicle, or both as described in such search warrant to inspection;

(b) Inspect any location or vehicle described in this subsection, all pertinent equipment, finished and unfinished materials, containers and labeling, all records, books, papers, and documents relating to the distribution and production of commercial fertilizers and soil conditioners, and other information necessary for the enforcement of the act;

(c) Obtain samples of commercial fertilizers and soil conditioners. The owner, operator, or agent in charge shall be given a receipt describing the samples obtained; and

(d) Make analyses of and test samples obtained pursuant to subdivision (c) of this subsection to determine whether such commercial fertilizers and soil conditioners are in compliance with the act.

For purposes of this subsection, location shall include a factory, warehouse, or establishment. It shall be the duty of the director to sample, inspect, make analyses of, and test commercial fertilizers and soil conditioners distributed within this state at such time and place and to such an extent as he or she may deem necessary to determine whether such products are in compliance with the provisions of the Nebraska Commercial Fertilizer and Soil Conditioner Act. The director is authorized to enter upon any public or private premises or any carriers

~~during regular business hours in order to have access to products subject to the provisions of the act and the rules and regulations pertaining thereto.~~

(2) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International or in accordance with other generally recognized methods.

(3) The director, in determining for administrative purposes whether any product is deficient in plant nutrients, shall be guided solely by the official sample as defined in subdivision (10) of section 81-2,162.02 and obtained and analyzed as provided for in subsection (2) of this section.

(4) The results of official analysis of any official sample ~~product, which has been found to be subject to penalty or other legal action,~~ shall be forwarded by the director to the ~~registrant or~~ person named on the label when the official sample is not in compliance with the act or the rules and regulations adopted pursuant to the act. at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the director, the report shall become official. Upon request made within ninety days of the analysis, the director shall furnish to the ~~registrant or~~ person named on the label a portion of any the official sample, found subject to penalty or other legal action. Following expiration of the ninety-day period, the director may dispose of such sample, ~~or samples.~~

Sec. 28. That section 89-186, Revised Statutes Supplement, 1992, be amended to read as follows:

89-186. (1) The Legislature hereby adopts by reference the following:

(a) The standards of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 44 entitled Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices as it exists on ~~June 30, 1992~~ the operative date of this section, except that in addition to the language found in Section 3.30. Liquid-Measuring Devices, S.1.6.4., S.1.6.5., UR.3.2., and UR.3.3. of the National Institute of Standards and Technology Handbook 44, any computing device in which a product or grade is offered for sale at more than one unit price may also compute at the lowest possible unit price for such transaction. All prices shall still be displayed or posted on the face of the dispenser. Such handbook shall govern all commercial and law enforcement weighing and measuring devices in the state;

(b) The Uniform Regulation for the Method of Sale of Commodities of the National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 130 entitled Uniform Laws and Regulations as it exists on ~~June 30, 1992~~ the operative date of this section. Such handbook shall be used to determine the proper units of measurement to be used in the keeping for sale or sale of commodities;

(c) The Uniform Packaging and Labeling Regulation of the

National Conference on Weights and Measures published in National Institute of Standards and Technology Handbook 130 entitled Uniform Laws and Regulations as it exists on ~~June 30, 1992~~ the operative date of this section. Such handbook shall govern the packaging and labeling by weight, measure, or count of commodities kept for sale or sold in this state; and

(d) The procedures designated in National Institute of Standards and Technology Handbook 133 entitled Checking the Net Contents of Packaged Goods as it exists on ~~June 30, 1992~~ the operative date of this section.

(2) Copies of the handbooks adopted by reference in this section shall be filed with the Secretary of State, Clerk of the Legislature, and Department of Agriculture.

(3) Whenever there exists an inconsistency between the provisions of the Weights and Measures Act other than this section and any of the handbooks adopted by reference, the requirements of such provisions of the act shall control.

Sec. 29. That section 89-187, Revised Statutes Supplement, 1992, be amended to read as follows:

89-187. The director shall:

(1) Maintain traceability of the primary standards to the National Institute of Standards and Technology;

(2) Enforce the provisions of the Weights and Measures Act;

(3) Adopt and promulgate reasonable rules and regulations for the enforcement of the act including the following:

(a) Requirements for the voluntary registration of sales and repair personnel for commercial weighing and measuring devices including:

(i) Registration fees for such personnel which shall not exceed the actual cost to defray the operation of the voluntary registration program;

(ii)(A) Qualifications for registration, which may include examinations, (B) performance standards to maintain registration, (C) types of equipment necessary for the work to be performed by the personnel, (D) responsibilities and privileges of registration, and (E) revocation and suspension of such registration and probation of the registrant; and

(iii) Minimum standards for the installation and maintenance of commercial weighing and measuring devices;

(b) Additional standards not specifically provided for in the act;

(c) Standards for (i) attachments or parts entering into the construction or installation of commercial weighing and measuring devices which shall tend to secure correct results in the use of such devices and (ii) the setting of laboratory fees which shall not exceed the actual cost for testing, correcting, calibrating, and verifying secondary standards and the establishment of standard laboratory operating procedures;

(d) Requirements for the suitable use of commercial weighing and measuring devices; and

(e) Guidelines for the appropriate method of weighing or measuring whenever the director determines that such guidelines would further the purpose of the act;

(4) Establish standards of weight, measure, or count, reasonable standards of fill, and standards for the presentation of cost-per-unit information for any commodity;

(5) Upon an application filed with the department by the applicant, grant exemptions, including specific exemptions for single-use commercial weighing and measuring devices, from the provisions of the act or the rules and regulations when the applicant on such application provides assurances, acceptable to the director, that such exemption is appropriate to the maintenance of good commercial practices within the state. Notwithstanding any other provision of the act, meters used by a public utility system for the measurement of electricity, natural or manufactured gas, water, or the usage of communication services, the appliances or accessories associated with such meters, and all weighing and measuring devices inspected or tested by the Public Service Commission shall be exempt from the registration, inspection, and testing requirements of the act, except that this exemption shall not apply to meters which determine the weight or measurement of motor fuel;

(6) Conduct investigations to insure compliance with the act;

(7) Delegate to appropriate personnel any of these responsibilities for the proper administration of the director's office;

(8) In his or her discretion, inspect and test weighing and measuring devices kept for sale or sold;

(9) Inspect and test annually and from time to time, as in the director's judgment seems necessary, to ascertain whether commercial weighing and measuring devices are correct;

(10) Register and test as far as practical all commercial weighing and measuring devices used in checking the receipt or disbursement of supplies in every institution for which funds are appropriated by the Legislature;

(11) Test annually and at the request of the Nebraska State Patrol all weighing and measuring devices used for the enforcement of the provisions of sections 39-6,180, 60-329, and 60-331. The agency responsible for such weighing and measuring devices shall pay the department for the actual cost of such tests. The department shall bill test fees to such agency upon completion of the test;

(12) Approve for use and may mark commercial weighing and measuring devices which the director finds to be correct and shall reject and mark or tag as rejected such commercial weighing and measuring devices which the director finds to be not correct or not registered and inspected in accordance with the Weights and Measures Act. Commercial weighing and measuring devices that have been rejected may be seized if not made correct within the time specified or if used or

disposed of in a manner not specifically authorized. The director shall condemn and may seize commercial weighing and measuring devices which are found not to be correct and not capable of being made correct;

(13) Weigh, measure, or inspect commodities kept for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept for sale or sold in accordance with the act or the rules and regulations. When commodities are found not to contain the amounts represented or are found to be kept for sale, sold, or in the process of delivery in violation of the act, the director may issue stop-sale, hold, or removal orders and may mark or tag such commodities as being in violation of the act. In carrying out the provisions of this section, the director shall employ recognized procedures pursuant to subdivisions (1)(b) through (d) of section 89-186;

(14) Provide for the weights and measures training of inspection personnel and adopt and promulgate by rule and regulation minimum training requirements which shall be met by all inspection personnel;

(15) Adopt and promulgate rules and regulations prescribing the appropriate term or unit of measurement to be used whenever the director determines in the case of a specific commodity that an existing practice of declaring the quantity by weight, measure, numerical count, or combination thereof does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion;

(16) Allow reasonable variations from the stated quantity of contents which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce;

(17) On or before July 1 of each year, notify all persons who have registered any commercial weighing or measuring device of the amount of fees which are due and that such fees shall be due on August 1 of each year and shall be delinquent after such date;

(18) Require, on and after August 1, 1992, all persons who operate a weighing and measuring establishment to obtain a permit to operate such establishment pursuant to section 89-187.01 and to pay to the department an application permit fee pursuant to section 89-187.02; and

(19) Require, on or before August 1 of each year, all persons who operate a weighing and measuring establishment to: (a) Register each commercial weighing and measuring device with the department upon forms furnished by the director; (b) pay to the department a registration fee in the amounts designated in column A; (c) pay device inspection fees to the department in the amounts designated in column B:

Scales:	A	B	Total
Fees			
Up to 35 pounds capacity	4.00	7.00	11.00

Multiunit Scales	4.00	33.00	37.00
Over 35 to 1,000 pounds capacity	4.00	10.00	14.00
Over 1,000 to 4,000 pounds capacity	4.00	21.00	25.00
Over 4,000 to 50,000 pounds capacity	4.00	25.00	29.00
Over 50,000 to 150,000 pounds capacity	4.00	30.00	34.00
Over 150,000 pounds capacity	4.00	51.00	55.00
Length Measuring Devices:			
Cordage or fabric	4.00	9.00	13.00
Pumps:			
Service Station Dispensers -- per hose <u>measuring element</u>	4.00	5.00	
9.00			
High-capacity service station dispensers over 20 gallons per minute -- per hose	4.00	12.00	16.00
Compressed natural gas -- per hose	4.00	50.00	54.00
Meters:			
Vehicle tank meters	4.00	12.00	16.00
Loading rack meters	4.00	22.00	26.00
Liquid petroleum gas meters	4.00	20.00	24.00
Liquid fertilizer meters	4.00	27.00	31.00
Liquid feed meters	4.00	27.00	31.00
Cryogenic	4.00	50.00	54.00
Mass Flow Metering Systems:			
Mass flow meters (all liquid)	4.00	50.00	54.00;

and (d) pay a penalty as may be required by the department of twenty-five percent per month of the fees for each month any such fees are delinquent not to exceed one hundred percent of such fees. Such penalties paid shall be in addition to the fees due. The department's decision regarding whether penalties will be imposed shall be based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fees.

Sec. 30. That section 89-197, Revised Statutes Supplement, 1992, be amended to read as follows:

89-197. It shall be unlawful for any person to:

(1) Use in commerce any weighing and measuring device which is not correct;

(2) Remove any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the department from any weighing and measuring device or commodity without specific written authorization from the department;

(3) Fail to report to the department when any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the

department has been removed from any weighing and measuring device or commodity without specific written authorization from the department if such person operates a weighing and measuring establishment and knows or has reason to know the tag, seal, or mark has been removed;

(4) Hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(5) Maintain or have in his or her possession any commercial weighing and measuring device that has not been registered and inspected in accordance with the provisions of the Weights and Measures Act;

(6) Sell or keep for sale less than the quantity he or she represents of a commodity;

(7) Take more than the quantity he or she represents of a commodity when, as buyer, he or she furnishes the weight or measure by means of which the amount of the commodity is determined;

(8) Operate any weighing and measuring establishment without a valid permit, while the permit is suspended, or after the permit has been revoked if a permit is required by the act;

(9) Determine a gross weight and tare weight to arrive at a net weight by the use in commerce of different weighing and measuring devices that in combination will not meet the absolute value of maintenance tolerance;

(10) Falsify in any manner, by any means, or by or through a representative a recorded representation or documentation from any weighing and measuring device or any representation or delivery ticket of a commodity bought or sold by weight, measure, or count;

(11) Use any commercial weighing and measuring device in a commercial application unless a Certificate of Conformance has been issued for such device unless exempt in section 89-186.01;

(12) Sell any weighing and measuring device for use in a commercial application unless a Certificate of Conformance has been issued for such devices unless exempt in section 89-186.01;

(13) Use, add to, or modify a commercial weighing and measuring device in any way which makes the device not correct unless such change has been authorized by the director as provided for in the act;

(14) Misrepresent the price of any commodity kept for sale or sold by weight, measure, or count or represent the price in any manner calculated or tending to mislead or in any way deceive a person;

(15) Misrepresent the quantity of any commodity kept for sale or sold or represent the quantity in any manner calculated or tending to mislead or in any way deceive a person;

(16) Fail to pay all fees and penalties as prescribed by the act and the rules and regulations adopted and promulgated pursuant to the act;

(17) Refuse to keep and make available for examination by the department all books, papers, and other information necessary for the enforcement of the act; or

(18) Use commercial weighing and measuring devices not in accordance with rules and regulations adopted and promulgated by the director pursuant to subdivision (3)(d) of section 89-187.

Sec. 31. That section 89-198, Revised Statutes Supplement, 1992, be amended to read as follows:

89-198. (1) In order to obtain compliance with the Weights and Measures Act, the director may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person who has violated, is violating, or is threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation has occurred, 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.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which any violation of the act or the rules and regulations has occurred, is occurring, or is about to occur, when notified by the director of such violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section, section 89-1,101, or both. Before the director reports a violation, an opportunity shall be given to such person to present his or her views to the director except when there exists an endangerment to the public health, safety, or welfare.

Sec. 32. That section 3, Legislative Bill 588, Ninety-third Legislature, First Session, 1993, be amended to read as follows:

Sec. 3. For purposes of the Pesticide Act:

(1) Active ingredient shall mean:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;

(b) In the case of a plant regulator, an ingredient that, through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or a product of an ornamental or crop plant;

(c) In the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or

(d) In the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue;

(2) Administrator shall mean the Administrator of the United States Environmental Protection Agency;

(3) Adulterated shall mean:

(a) That the strength or purity of a pesticide falls below the professed standard of quality as expressed on the labeling under which a pesticide is sold;

(b) That any substance is substituted wholly or in part for the pesticide; or

(c) That any valuable constituent of the pesticide has been wholly or in part abstracted;

(4) Animal shall mean a vertebrate or invertebrate species, including humans, other mammals, birds, fish, and shellfish;

(5) Antidote shall mean a practical treatment used in preventing or lessening ill effects from poisoning, including first aid;

(6) Biological control agent shall mean any living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism;

(7) Bulk shall mean any distribution of a pesticide in a refillable container designed and constructed to accommodate the return and refill of greater than fifty-five gallons of liquid measure or one hundred pounds of dry net weight of the product;

(8) Certified applicator shall mean an individual who is licensed under the act as authorized to use any pesticide which is classified for restricted use. Certified applicator shall include commercial applicator, noncommercial applicator, and private applicator;

(9) Commercial applicator shall mean a certified applicator, whether or not he or she is a private applicator with respect to some uses, who uses any pesticide which is classified for restricted use for any purpose or on any property other than as provided by subdivision (35) of this section. Commercial applicator shall also include those persons required to be licensed under subsection (2) of section 17 of this act;

(10) Dealer shall mean any manufacturer, registrant, or distributor who is required to be licensed as such under section 14 of this act;

(11) Defoliant shall mean a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;

(12) Department shall mean the Department of Agriculture;

(13) Desiccant shall mean a substance or mixture of substances intended to artificially accelerate the drying of plant tissue;

(14) Device shall mean an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a pest or other form of plant or animal life, other than a human or a bacteria, virus, or other microorganism on or in living humans or other living animals. Device shall not include equipment intended to be used for the application of pesticides when sold separately from a pesticide;

(15) Director shall mean the Director of Agriculture or his or her designee;

(16) Distribute shall mean to offer for sale, hold for sale, sell, barter, exchange, supply, deliver, offer to deliver, ship, hold for shipment, deliver for shipment, or release for shipment;

(17) Environment shall include water, air, land, plants, humans, and other animals living in or on water, air, or land and interrelationships which exist among these;

(18) Federal act shall mean the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and any regulations adopted and promulgated under it;

(19) Federal agency shall mean the United States

Environmental Protection Agency;

(20) Fungus shall mean any non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, yeast, and bacteria, but shall not include non-chlorophyll-bearing thallophytes on or in living humans or other living animals or those on or in a processed food or beverage or pharmaceuticals;

(21) Inert ingredient shall mean an ingredient that is not an active ingredient;

(22) Ingredient statement shall mean a statement which contains the name and percentage of each active ingredient and the total percentage of all inert ingredients in the pesticide. If the pesticide contains arsenic in any form, a statement of the percentage of total water-soluble arsenic calculated as elementary arsenic shall be included;

(23) Insect shall mean any of the numerous small invertebrate animals generally having a segmented body and for the most part belong to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies. Insect shall include allied classes of arthropods, the members of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice;

(24) Label shall mean the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers;

(25) Labeling shall mean all labels and any other written, printed, or graphic matter (a) accompanying the pesticide or device at any time or (b) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, except accurate, nonmisleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides;

(26) Land shall mean any land or water area, including airspace, and any plant, animal, structure, building, contrivance, commodity, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any used for transportation;

(27) Misbranded shall mean that any pesticide meets one or more of the following criteria:

(a) Its labeling bears any statement, design, or graphic representation relative to the pesticide or to its ingredients which is false or misleading in any particular;

(b) It is contained in a package or other container or wrapping which does not conform to the standards established by the administrator pursuant to section 136w(c) of the federal act;

(c) It is an imitation of or distributed under the name of another pesticide;

(d) Its label does not bear the registration number assigned under section 136e of the federal act to each establishment in which it was produced;

(e) Any word, statement, or other information required by

or under authority of the Pesticide Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(f) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of the federal act, are adequate to protect health and the environment;

(g) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under the Pesticide Act or section 136a(d) of the federal act, is adequate to protect health and the environment;

(h) In the case of a pesticide not registered in accordance with sections 7 and 8 of this act and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the words Not Registered for Use in the United States of America;

(i) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail package, if any, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subdivision if:

(i) The size or form of the immediate container or the outside container or wrapper of the retail package makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) The ingredient statement appears prominently on another part of the immediate container or outside container or wrapper, permitted by the administrator;

(j) The labeling does not contain a statement of the use classification under which the product is registered;

(k) There is not affixed to its container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the producer, registrant, or person for whom produced;

(ii) The name, brand, or trademark under which the pesticide is sold;

(iii) The net weight or measure of the content, except that the administrator may permit reasonable variations; and

(iv) When required by regulations of the administrator to

effectuate the purposes of the federal act, the registration number assigned to the pesticide under such act and the use classification; or

(l) The pesticide contains any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by the Pesticide Act:

(i) The skull and crossbones;

(ii) The word poison prominently in red on a background of distinctly contrasting color; and

(iii) A statement of a practical first-aid or other treatment in case of poisoning by the pesticide;

(28) Nematode shall mean an invertebrate animal of the phylum Nematelminthes and class Nematode, an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle, inhabiting soil, water, plants, or plant parts;

(29) Noncommercial applicator shall mean a certified applicator who applies restricted-use pesticides only on lands owned or controlled by his or her employer or for a governmental agency or subdivision of the state;

(30) Person shall mean any individual, partnership, association, corporation, or organized group of persons, whether incorporated or not;

(31) Pest shall mean:

(a) Any insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life; or

(b) Any virus, bacteria, or other microorganism, other than a virus, bacteria, or microorganism in or on living humans or other living animals, as defined by the department;

(32) Pesticide shall mean a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, including any biological control agent. Pesticide shall include specialty pesticides. Pesticide shall not include any article that is a new animal drug within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(w), that has been determined by the Secretary of Health and Human Services to be a new animal drug by regulation establishing conditions of use for the article, or that is an animal feed within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(x), bearing or containing a new animal drug;

(33) Plant regulator shall mean a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant but shall not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment;

(34) Pollute shall mean to alter the physical, chemical, or biological quality of or to contaminate water in the state, which alteration or contamination renders the water harmful, detrimental, or injurious to

humans, the environment, or the public health, safety, or welfare;

(35) Private applicator shall mean a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

(36) Restricted-use pesticide shall mean a pesticide classified as a restricted-use pesticide by the federal agency, a state-limited-use pesticide, or any pesticide receiving an exemption under section 136p of the federal act;

(37) Specialty pesticide shall mean (a) a disinfectant, sanitizer, germicide, or biocide or (b) a pesticide labeled solely for use directly on humans or pets or in, on, or around areas associated with the household or home life including lawn and garden and ornamental uses but shall not include turf as determined by the director;

(38) State management plan shall mean a generic plan developed by the department to implement a strategy to prevent, monitor, evaluate, and mitigate any occurrence of pesticides in ground water and surface water in the state and any specific plans developed when an occurrence has been detected;

(39) ~~(38)~~ State pesticide plan shall mean the plan developed by the department to enter into a cooperative agreement with the federal agency to assume the responsibility for the primary enforcement of pesticide use and the training and licensing of certified applicators;

(40) ~~(39)~~ State-limited-use pesticide shall mean any pesticide included on a list of state-limited-use pesticides by the department pursuant to the state management plan; and

(41) ~~(40)~~ Weed shall mean any plant that grows where not wanted.

Sec. 33. That section 8, Legislative Bill 588, Ninety-third Legislature, First Session, 1993, be amended to read as follows:

Sec. 8. (1) The application for registration of a pesticide shall include:

(a) The name and address of the applicant and the name and address of the person whose name shall appear on the pesticide label, if not the applicant's;

(b) The name of the pesticide;

(c) Two complete copies of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use;

(d) The use classification, whether for restricted or general use, as provided by the federal act;

(e) The use classification proposed by the applicant including whether the product is a specialty pesticide, if the pesticide is not required by federal law to be registered under a use classification;

(f) A designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state; and

(g) Other information required by the department for determining the eligibility for registration.

(2) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.

(3) The department may require a full description of the tests made and the results of the tests on which claims are based before approving registration of a pesticide that is not registered under the federal act or for which federal or state restrictions on use are being considered.

(4) Information collected under subsection (2) or (3) of this section shall not be public records. The department shall not reveal such information to other than representatives of the department, the Attorney General or other legal representative of the department when relevant in any judicial proceeding, or any other officials of another Nebraska agency, the federal government, or other states who are similarly prohibited from revealing this information.

(5) A person located outside this state, as a condition to registration of a pesticide, shall file with the department a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the person may designate in writing the Secretary of State as the recipient of service of process for the person in this state.

Sec. 34. That section 14, Legislative Bill 588, Ninety-third Legislature, First Session, 1993, be amended to read as follows:

Sec. 14. (1) Except as provided in subsection (2) of this section, a person shall not distribute at wholesale or retail or possess pesticides with an intent to distribute them without a pesticide dealer license for each distribution location. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his, her, or its principal out-of-state location or outlet.

(2) The requirements of subsection (1) of this section shall not apply to:

(a) A commercial applicator or noncommercial applicator licensed under sections 15 to 21 of this act who uses restricted-use pesticides only as an integral part of a pesticide application service and does not distribute any unapplied pesticide;

(b) A federal, state, county, or municipal agency using restricted-use pesticides only for its own program;

(c) Persons who sell only pesticide products in containers holding fifty pounds or less by weight or one gallon or less by volume and

do not sell any restricted-use pesticides or bulk pesticides; or

(d) ~~Persons who sell only general-use specialty pesticides, for household use.~~

(3) A pesticide dealer may distribute restricted-use pesticides only to a certified applicator, a licensed pesticide dealer, or, under rules and regulations adopted by the department, a person who is not a certified applicator for application by a certified applicator.

(4) A pesticide dealer license shall expire on December 31 of each year, unless it is suspended or revoked before that date. Such license shall not be transferable to another person or location and shall be prominently displayed to the public in the pesticide dealer's place of business.

(5) If the pesticide dealer has had a license suspended or revoked, or has otherwise had a history of violations of the Pesticide Act, the department may require an additional demonstration of dealer qualifications prior to issuance or renewal of a license to such person.

(6) Application for an initial pesticide dealer license shall be submitted to the department within thirty days after the operative date of this section or prior to commencing business as a pesticide dealer. Application for renewal of a pesticide dealer license shall be submitted to the department by January 1 of each year. All applications shall be accompanied by an annual license fee of fifty dollars. The fee may be increased or decreased by the director after a public hearing is held outlining the reason for any proposed change in the fee. In no event shall the fee exceed one hundred dollars per license. Application shall be on a form prescribed by the department and shall include the full name of the person applying for such license. If such applicant is a partnership, association, corporation, or organized group of persons, the full name of each member of the firm or partnership or of the principal officers of the association or corporation shall be given on the application. Such application shall further state the address of each outlet to be licensed, the principal business address of the applicant, the name of the person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the department.

An applicant located outside this state shall file with the department a written instrument designating a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

If an application for renewal of a pesticide dealer license is not filed before January 1 of the year for which the license is to be issued, an additional fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, shall be paid by the applicant before the license may be issued.

An application for a duplicate pesticide dealer's license shall be accompanied by a nonrefundable application fee of ten dollars.

(7) Each licensed pesticide dealer shall be responsible for the acts of each person employed by him or her in the solicitation and distribution of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, modification, or revocation after a hearing for any violation of the act, whether committed by the dealer or by the dealer's officer, agent, or employee.

(8) The department shall require each pesticide dealer to maintain records of the dealer's purchases and distribution of all restricted-use pesticides and may require such records to be kept separate from other business records. The department may prescribe by rules and regulations the information to be included in the records. The dealer shall keep such records for a period of three years and shall provide the department access to examine such records and a copy of any record on request.

Sec. 35. That sections 33, 34, and 36 of this act shall become operative on January 1, 1994. The other sections of this act shall become operative on their effective date.

Sec. 36. That original sections 8 and 14, Legislative Bill 588, Ninety-third Legislature, First Session, 1993, are repealed.

Sec. 37. That original sections 54-701, 54-703 to 54-705, 54-742 to 54-747, 54-750, 54-790, 54-791, and 81-202, Reissue Revised Statutes of Nebraska, 1943, sections 2-4325, 54-859, 54-2240, 54-2244, 54-2254, 54-2263, 54-2275, 54-2276, 54-2290, 54-2295, 54-2299, 81-2,162.07, 89-186, 89-187, 89-197, and 89-198, Revised Statutes Supplement, 1992, and section 3, Legislative Bill 588, Ninety-third Legislature, First Session, 1993, and also sections 54-702 and 54-789, Reissue Revised Statutes of Nebraska, 1943, are repealed.