

LEGISLATIVE BILL 588

Approved by the Governor April 7, 1993

Introduced by Baack, 47, Bromm, 23, at the request of the Governor

AN ACT relating to agriculture; to amend sections 2-958, 71-2510, and 81-2,162.04, Reissue Revised Statutes of Nebraska, 1943; to adopt the Pesticide Act; to eliminate provisions relating to economic poisons; to harmonize provisions; to provide operative dates; and to repeal the original sections, and also sections 2-2601 to 2-2614 and 2-2616 to 2-2621, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. Sections 1 to 34 of this act shall be known and may be cited as the Pesticide Act.

Sec. 2. The intent of the Pesticide Act is to regulate, in the public interest, the labeling, distribution, storage, transportation, use, application, and disposal of pesticides for the protection of human health and the environment. The Legislature hereby finds that pesticides are valuable to our state's agricultural production and to the protection of humans and the environment from insects, rodents, weeds, and other forms of life which may be pests but that it is essential to the public health and the welfare that pesticides be regulated to prevent adverse effects on humans and the environment. New pesticides are continually being discovered, synthesized, or developed which are valuable for the control of pests and for use as defoliant, desiccant, and plant regulators, but such pesticides may be ineffective, may cause injury to humans, or may cause unreasonably adverse effects on the environment if not properly used. Pesticides may injure humans or animals, either by direct poisoning or by gradual accumulation of pesticide residues in the tissues. Crops or other plants may also be injured by improper use of pesticides, and the drifting or washing of pesticides into streams or lakes may cause appreciable damage to aquatic life. A pesticide applied for the purpose of exerting pesticidal action in a crop which is not itself injured by the pesticide may drift and injure other crops or nontarget organisms with which it comes in contact. The monitoring of pesticides in ground water and surface water is essential for human health and the environment. Therefore, it is deemed necessary to provide for regulation of pesticides.

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 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) 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;

(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;

(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

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

Sec. 4. Except as specifically provided in the Pesticide Act, the provisions of the act shall preempt ordinances and resolutions by political subdivisions that prohibit or regulate any matter relating to the registration, labeling, distribution, sale, handling, use, application, or disposal of pesticides.

Sec. 5. The department shall have the following powers,

functions, and duties:

(1) To administer, implement, and enforce the Pesticide Act and serve as the lead state agency for the regulation of pesticides. The department shall involve the natural resources districts and other state agencies, including the Department of Environmental Quality, the Nebraska Natural Resources Commission, the Department of Water Resources, or the Department of Health, in matters relating to water quality. Nothing in the act shall be interpreted in any way to affect the powers of any other state agency or of any natural resources district to regulate for ground water quality or surface water quality as otherwise provided by law;

(2) To be responsible for the development and implementation of a state management plan for the prevention, evaluation, and mitigation of occurrences of pesticides or pesticide breakdown products in ground water and surface water of the state. The Department of Environmental Quality shall be responsible for the adoption of standards for pesticides in surface water and ground water, and the Department of Health shall be responsible for the adoption of standards for pesticides in drinking water. These standards shall be established as action levels in the state management plan at which prevention and mitigation measures are implemented. Such action levels may be set at or below the maximum contaminant level set for any product as set by the federal agency under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq. The department shall cooperate with and use existing expertise in other state agencies when developing a state management plan and shall not hire a hydrologist within the department for such purpose. As part of the state management plan and after notice and public hearing, the department may adopt and promulgate rules and regulations providing lists of state-limited-use pesticides for the entire state or for a designated area within the state, subject to the following:

(a) A pesticide may be included on a list of state-limited-use pesticides if:

(i) The department determines that the pesticide, when applied in accordance with its directions for use, warnings, and cautions and for uses for which it is registered, may without additional regulatory restrictions cause unreasonable adverse effects on humans or the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticides;

(ii) The water quality standards set by the Department of Environmental Quality or the Department of Health pursuant to this section are exceeded; or

(iii) The department determines that the pesticide requires additional restrictions to meet the requirements of the Pesticide Act, the federal act, or any plan adopted under the Pesticide Act or the federal act;

(b) The department may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or possessed only:

(i) With permission of the department;

(ii) Under direct supervision of the department or its designee in certain areas and under certain conditions;

(iii) In specified quantities and concentrations or at specified times; or

(iv) According to such other restrictions as the department may set by regulation;

(c) The department may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records;

(d) The state management plan shall be coordinated with the department and other state agency plans and with other state agencies and with natural resources districts; and

(e) The state management plan may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environmental Quality or the Department of Health;

(3) To adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Pesticide Act. There is hereby created a Rules and Regulations Advisory Committee consisting of the Director of Agriculture, Director of Environmental Quality, Director of Natural Resources, Director of Water Resources, and Director of Health or the designated representative of any of such directors. The committee shall advise the Department of Agriculture in the adoption and promulgation of such rules and regulations as are necessary for the enforcement and administration of the act. The regulations shall include, but not be limited to, regulations providing for:

(a) The collection of samples, examination of records, and reporting of information by persons subject to the act;

(b) The safe handling, transportation, storage, display, distribution, use, and disposal of pesticides and their containers;

(c) Labeling requirements of all pesticides required to be registered under provisions of the act, except that such regulations shall not impose any requirements for federally registered labels contrary to those required pursuant to the federal act;

(d) Classes of devices which shall be subject to the Pesticide Act;

(e) Reporting and record-keeping requirements for persons distributing or using pesticide products made available under section 136p of the federal act;

(f) Methods to be used in the application of pesticides when the department finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Act. Such regulations may include methods to be used in the application of a restricted-use pesticide, may relate to the time, place, manner, methods, materials, amounts, and concentrations in connection with the application of the pesticide, and may restrict or prohibit use of the pesticides in designated areas during

specified periods of time. The regulations shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to (i) plants, including forage plants, or adjacent or nearby lands, (ii) wildlife in the adjoining or nearby areas, (iii) fish and other aquatic life in waters in reasonable proximity to the area to be treated, (iv) surface water or ground water, and (v) humans, animals, or beneficial insects. In adopting and promulgating such regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, or other reliable sources. The department may, by regulation, require that notice of a proposed application of a pesticide be given to landowners whose property is adjacent to the property to be treated or in the immediate vicinity thereof if the department finds that such notice is necessary to carry out the purpose of the act;

(g) State-limited-use pesticides for the state or for designated areas in the state;

(h) Establishment of the amount of any fee or fine as directed by the act; and

(i) Establishment of the components of any state management plan;

(4) To enter any public or private premises at any reasonable time to:

(a) Inspect and sample any equipment authorized or required to be inspected under the act or to inspect the premises on which the equipment is kept or stored;

(b) Inspect or sample any area exposed or reported to be exposed to a pesticide or where a pesticide application has been made;

(c) Inspect and sample any area where a pesticide is disposed of or stored;

(d) Observe the use and application of and sample any pesticide;

(e) Inspect and copy any records relating to the distribution or use of any pesticide or the issuance of any license or registration under the act; or

(f) Inspect, examine, or take samples from any building or place owned, controlled, or operated by a registrant, certified applicator, or dealer if, from probable cause, it appears that the building or place contains a pesticide;

(5) To sample, inspect, make analysis of, and test any pesticide found within this state;

(6) To issue and enforce a written or printed order to stop the sale, removal, or use of a pesticide if the department has reason to believe that the pesticide is in violation of any provision of the act. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order shall not distribute, remove, or use the pesticide until the department determines that the pesticide is in compliance with the act. This subdivision shall not limit the right of the department to proceed as authorized by any other provision of the act;

(7)(a) To sue in the name of the director to enjoin any violation of the act. Venue for such action shall be in the county in which the alleged violation occurred, is occurring, or is threatening to occur; and

(b) To request the county attorney or the Attorney General to bring suit to enjoin a violation or threatened violation of the act;

(8) To impose or levy an administrative fine of not more than five thousand dollars on any person who has violated the provisions, requirements, conditions, limitations, or duties imposed by the act. A violation shall mean any separate activity or day in which an activity takes place;

(9) To cause a written complaint to be served upon the alleged violator or violators whenever the director has reason to believe that a violation of any provision of the act, a rule or regulation under the act, or any order of the department has occurred. The complaint shall specify the provision of the act, rule, regulation, or order alleged to be violated and the facts alleged to constitute a violation and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless each person named in the order requests in writing a hearing before the director and answers the charges complained of at a time and a place specified in the notice. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and answer the charges complained of;

(10) To take measures necessary to ensure that all fees, fines, and penalties prescribed by the act and the rules or regulations adopted under the act are assessed and collected;

(11) To access, inspect, and copy all books, papers, records, bills of lading, invoices, and other information relating to the use and distribution of pesticides necessary for the enforcement of the act;

(12) To seize, for use as evidence, without formal warrant if probable cause exists, any pesticide which is in violation of the act or is not approved by the department or which is found to be used or distributed in the violation of the act or the rules and regulations adopted and promulgated under it;

(13) To declare as a pest any form of plant or animal life, other than humans and other than bacteria, viruses, and other microorganisms on or in living humans or other living animals, which is injurious to health or the environment;

(14) To adopt classifications of restricted-use pesticides as determined by the federal agency under the federal act. In addition to the restricted-use pesticides classified by the administrator, the department may also determine state-limited-use pesticides for the state or for designated areas within the state as provided in subdivision (2) of this section;

(15) To receive grants-in-aid from any federal entity, and to enter into cooperative agreements with any federal entity, any agency of this state, any subdivision of this state, any agency of another state, any Indian tribe, or any private person for the purpose of obtaining assistance

in the implementation of the Pesticide Act. The department may reimburse any such entity from the Pesticide Administrative Cash Fund for the work performed under the cooperative agreement. The department may delegate its administrative responsibilities under the act to cities of the metropolitan and primary classes if it reasonably believes that such cities can perform the responsibilities in a manner consistent with the act and the rules and regulations adopted and promulgated under it;

(16) To prepare and adopt such plans as are necessary to implement any requirements of the federal agency under the federal act;

(17) To request the assistance of the Attorney General or the county attorney in the county in which a violation of the Pesticide Act has occurred with the prosecution or enforcement of any violation of the act;

(18) To enter into a settlement agreement with any person regarding the disposition of any license, permit, or administrative fine;

(19) To issue, cancel, suspend, modify, or place on probation any license or permit issued pursuant to the act; and

(20) To make such reports to the federal agency as are required under the federal act.

Sec. 6. Except as otherwise provided in the Pesticide Act, all money received from any source pursuant to the act shall be remitted by the department to the State Treasurer for credit to the Pesticide Administrative Cash Fund, which fund is hereby created. The fund shall be used by the department to aid in defraying the expenses of administering the act. Any money in the Economic Poison Administration Cash Fund on the operative date of this section shall be transferred to the Pesticide Administrative Cash Fund on such date. Any money in the Pesticide Administrative Cash Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 7. (1) Except as provided by subsection (2) or (3) of this section, no pesticide shall be distributed in this state or delivered for transportation or transported in intrastate commerce or between points within the state through a point outside the state unless it is registered with the department pursuant to section 8 of this act. The manufacturer or other person whose name appears on the label of the pesticide shall register the pesticide.

(2) Registration shall not be required for the transportation of a pesticide from one plant or warehouse to another plant or warehouse operated by the same person if the pesticide is used solely at the second plant or warehouse as a constituent of a pesticide that is registered under such section.

(3) Registration shall not be required if the pesticide is distributed under the provisions of an experimental-use permit issued by the federal agency.

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, 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. 9. (1) Each pesticide distributed in this state shall bear a label containing the following information relating to the pesticide:

(a) The name, brand, or trademark under which the pesticide is distributed;

(b) The name and percentage of each active ingredient and the total percentage of inert ingredients;

(c) Directions for use that are necessary for effecting the purpose for which the product is intended and, if complied with, are adequate for the protection of health and the environment;

(d) If the pesticide contains any form of arsenic, the percentage of total water-soluble arsenic, calculated as elementary arsenic;

(e) The name and address of the manufacturer, registrant, or person for whom the pesticide was manufactured;

(f) Numbers or other symbols to identify the lot or batch of the manufacturer of the contents of the package; and

(g) A clear display of appropriate warnings, symbols, and cautionary statements commensurate with the toxicity or use classification of the pesticide.

(2) The labeling of each pesticide distributed in this state shall state the use classification for which the product is registered.

(3) The label bearing the ingredient statement under subdivision (1)(b) of this section shall be on or attached to that part of the immediate container that is presented or displayed under customary conditions of purchase and, if the ingredient statement cannot be clearly read without removing the outer wrapping, on any outer container or wrapper of a retail package.

(4) Any word, statement, or information required by the Pesticide Act to appear on a label or in labeling of a pesticide or device shall be prominently and conspicuously placed so that, if compared with other material on the label or in the labeling, it is likely to be understood by the ordinary individual under customary condition of use.

Sec. 10. Registration of a pesticide shall expire annually on December 31 unless sooner canceled. A person who applies for renewal of registration shall include in the renewal application only information that is different from the information furnished at the time of the most recent registration or renewal. A registration in effect on December 31 for which a renewal application has been filed and renewal fees have been paid shall continue in effect until the department notifies the applicant that the registration has been renewed or denied renewal.

Sec. 11. (1) The department may deny an application for registration or may cancel, suspend, or modify such registration if the department finds that:

(a) The composition of the pesticide does not warrant the proposed claims made for it;

(b) The pesticide, its labeling, or other materials required to be submitted do not comply with the requirements of the Pesticide Act; or

(c) The department has reason to believe that any use of a registered pesticide is in violation of a provision of the act or is dangerous or harmful.

(2) The department shall issue written notice of its cancellation, suspension, modification, or denial and shall give such registrant or applicant an opportunity to make necessary corrections or to have a hearing under this section.

(3) After an opportunity at a hearing for presentation of evidence by interested parties, the department may deny, suspend, modify, or cancel the registration of the pesticide if the department finds that:

(a) Use of the pesticide has demonstrated uncontrollable

adverse environmental effects;

(b) Use of the pesticide is a detriment to the environment that outweighs the benefits derived from its use;

(c) Even if properly used, the pesticide is detrimental to vegetation except weeds, to domestic animals, or to public health and safety;

(d) A false or misleading statement about the pesticide has been made or implied by the registrant or the registrant's agent, in writing, verbally, or through any form of advertising literature;

(e) The registrant has not complied or the pesticide does not comply with a requirement of the act or the rules and regulations adopted and promulgated under the act;

(f) The composition of the pesticide does not warrant the proposed claims made for it; or

(g) The pesticide, its labeling, or other materials required to be submitted do not comply with the requirements of the act.

Sec. 12. (1) The department may register a pesticide for additional uses and methods of application not covered by federal regulation but not inconsistent with federal law for the purpose of meeting a special local need.

(2) Before approving a registration under this section, the department shall determine that the applicant meets the other requirements of the Pesticide Act and that a special local need exists.

(3) The department shall notify the federal agency of the issuance of any special local need registration. If the federal agency disapproves of any special local need registration within ninety days after issuance, such registration shall not be effective longer than such time.

Sec. 13. (1) As a condition to registration or renewal of registration as required by sections 7 to 12 of this act, an applicant shall pay to the department a fee of one hundred dollars for each pesticide to be registered, except that 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 such fee exceed one hundred fifty dollars for each pesticide to be registered. All fees collected shall be remitted to the State Treasurer for credit as follows:

(a) Thirty dollars of each such fee to the Noxious Weed Cash Fund as provided in section 2-958; and

(b) The remainder to the Pesticide Administrative Cash Fund.

(2) If a person fails to apply for renewal of registration before January 1 of any year, such person, as a condition to renewal, shall pay a late registration fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, for each product to be renewed in addition to the renewal fee.

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 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. 15. (1) The department shall license pesticide applicators involved in the categories established in 40 C.F.R. 171 and any other categories established pursuant to rules and regulations necessary to meet the requirements of the state.

(2) A person shall not use a restricted-use pesticide unless the person is:

(a) Licensed as a commercial or noncommercial applicator and authorized by the license to use the restricted-use pesticide in the category covering the proposed pesticide use; or

(b) Licensed as a private applicator.

(3) The department may waive part or all of any license examination requirements on a reciprocal basis with any other state or federal agency that has substantially the same examination standards.

Sec. 16. (1) The department may classify commercial and noncommercial licenses under subcategories within categories according to the subject, method, or place of pesticide application.

(2) The director shall establish separate testing requirements for licensing in each category for which the department is responsible and may establish separate testing requirements for licensing in

subcategories within a category.

(3) The Cooperative Extension Service of the University of Nebraska, through its county extension agents and specialists in the State of Nebraska, shall conduct training sessions on the use of restricted-use pesticides for private, commercial, and noncommercial applicators. The programs shall be directed toward thorough comprehension and knowledge on the safe use of restricted-use pesticides. The Cooperative Extension Service shall schedule regular and frequent training sessions and shall issue recommendations to the director of satisfactory training for private, commercial, and noncommercial applicators completing the training.

Sec. 17. (1) An individual who applies restricted-use pesticides to the land of another person for hire or compensation shall apply to the department for a commercial applicator license issued for the categories and subcategories in which the pesticide application is to be made.

(2) Any person who applies lawn care or structural pest control pesticides to the land of another person for hire or compensation shall apply to the department for a commercial applicator license, regardless of whether such business applies any restricted-use pesticide.

(3) Application for an original or renewal commercial applicator license shall be on forms prescribed by the department. The application shall include information as required by the director and be accompanied by a license fee of ten dollars. The fee may be increased or decreased by the director after a public hearing is held outlining the reasons for any proposed change. In no event shall the fee exceed twenty-five dollars per license.

(4) The department may deny a commercial applicator license if it has determined that:

(a) The applicant has had a license as a certified applicator issued by this state or another state revoked within the last two years;

(b) The applicant has been unable to satisfactorily fulfill licensing requirements;

(c) The applicant for any other reason cannot be expected to be able to fulfill the provisions of the Pesticide Act applicable to the category for which application is made; or

(d) An applicant for an original commercial applicator license has not passed an examination under sections 16 and 19 of this act.

(5) An individual to whom a commercial applicator license is issued shall be a certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(6) As a condition to issuance of a commercial applicator license, 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 in

writing the Secretary of State as the recipient of service of process for the applicant in this state.

(7) Any person who operates a business that applies pesticides to the land of another person for hire or compensation shall be responsible for the acts of each certified applicator employed by him or her in the application of a pesticide. Such person shall be subject to the same penalties and violations as the applicator.

Sec. 18. (1) A noncommercial applicator shall apply to the department for a noncommercial applicator license issued for the categories and subcategories in which the pesticide application is to be made.

(2) Application for an original or renewal noncommercial applicator license shall be on forms prescribed by the department. The department shall not charge a noncommercial applicant a license fee.

(3) The director shall not issue an original noncommercial applicator license before the applicant has passed an examination under sections 16 and 19 of this act.

(4) A person to whom a noncommercial applicator license is issued shall be a certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(5) As a condition to issuance of a noncommercial applicator license, 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 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.

Sec. 19. Each person applying for a license as a commercial or noncommercial applicator shall pass an examination demonstrating that the person:

(1) Is properly qualified to perform functions associated with pesticide application to a degree directly related to the nature of the activity and the associated responsibility; and

(2) Has knowledge of the use and effects of restricted-use pesticides in the categories and subcategories in which the person is to be licensed.

Sec. 20. (1) A person shall be deemed to be a private applicator if the person uses a restricted-use pesticide for the purpose of producing an agricultural commodity:

(a) On property owned or rented by the person or person's employer or under the person's general control; or

(b) On the property of another person if applied without compensation other than the trading of personal services between producers of agricultural commodities.

(2) An employee shall qualify as a private applicator under subdivision (1)(a) of this section only if he or she provides labor for the pesticide application but does not provide the necessary equipment or

pesticides.

(3) Every person applying for a license as a private applicator shall (a) undertake a training session approved by the department or (b) pass an examination showing that the person is properly qualified to perform functions associated with pesticide application to a degree directly related to the nature of the activity and the associated responsibility.

(4) The department shall not charge a license fee for a private applicator license.

Sec. 21. (1) Each commercial, noncommercial, and private applicator license shall expire on April 15 following the third year in which it was issued.

(2) Except as provided by subsection (3) of this section, a person having a valid commercial or noncommercial applicator license may renew the license for another three-year period by:

(a) Paying to the department an amount equal to the annual license fee required by section 17 of this act; and

(b)(i) Undertaking the training approved by the department;

or

(ii) Submitting to retesting prior to renewal of the license.

(3) Any person who allows his or her commercial or noncommercial applicator license to expire shall be required to submit to testing prior to the renewal of the license.

(4) The application for renewal of a private applicator license shall be the same as the application for an initial license.

(5) Notwithstanding sections 15 to 21 of this act:

(a) An individual required to be licensed as a certified applicator may use such pesticides as a noncertified applicator for a period of up to sixty consecutive days. In order to use pesticides as a noncertified applicator, the individual or his or her employer shall apply to the department for a certified applicator license within ten days of making the first pesticide use. An individual may only use pesticides as a noncertified applicator for one sixty-day period. The application for a certified applicator license shall include the name and license number of the certified applicator who is supervising the noncertified applicator. All pesticide uses made by an individual as a noncertified applicator shall be made under the direct supervision of a certified applicator. The certified applicator shall provide such training and supervision as is necessary to:

(i) Determine the level of experience and knowledge of the noncertified applicator in the use of a pesticide; (ii) provide verifiable, detailed guidance on how to conduct each individual pesticide use performed under his or her direct supervision; (iii) accompany the noncertified applicator to at least one site which would be typical of each type of pesticide use that the noncertified applicator performs; (iv) be accessible to provide further instructions at all times during the noncertified applicator's use of the pesticide; and (v) be able to be physically on the site, should the need arise, where the pesticide use or storage is taking place within a reasonable period of time. Both the certified and noncertified applicators

shall be responsible for the acts of the noncertified applicator and each shall be subject to all penalties and violations under the Pesticide Act. The department may deny or suspend the use of pesticides by a noncertified applicator if it has reasonable cause to believe that such person may not become eligible to become a certified applicator or uses any pesticide in violation of the act; and

(b) Any commercial, noncommercial, or private applicator license issued by the federal agency shall remain valid until such time as the license expires under the terms of the license or until it is sooner revoked, suspended, modified, or placed on probation.

Persons applying for a certified applicator license under the Pesticide Act and who are licensed in those categories by the federal agency shall make application as a renewal of such license.

Sec. 22. (1) The department shall require each certified applicator to maintain records of the use of all restricted-use pesticides. The department may by rules and regulations prescribe the information to be included in the records.

(2) The department may require a licensee to keep records of the licensee's application of general-use pesticides. The department may by rules and regulations prescribe the information to be included in the records.

(3) The licensee shall keep records required under this section for a period of three years from the date of the pesticide application.

(4) The licensee shall provide the department access to such records and a copy of any requested record pertaining to the application of pesticides.

Sec. 23. (1) The director may suspend, modify, revoke, or place on probation any pesticide dealer license or certified applicator license if the director finds that the licensee has:

(a) Made a pesticide recommendation or application inconsistent with the pesticide's labeling or with the restrictions on the use of the pesticide imposed by the state or the federal agency;

(b) Operated in a faulty, careless, or negligent manner;

(c) Refused or, after notice, failed to comply with any applicable provision of the Pesticide Act, any rule or regulation adopted under the act, or any lawful order of the director;

(d) Refused or neglected to keep and maintain the records required by the act or to make reports as required;

(e) Made false or fraudulent records, invoices, or reports;

(f) Used fraud or misrepresentation in making an application for a license or renewal of a license; or

(g) Aided or abetted a licensed or an unlicensed person to evade the provisions of the act, conspired with a licensed or an unlicensed person to evade the provisions of the act, or allowed the licensee's license to be used by another person.

(2) The director may temporarily suspend a license under the act for not more than ten days, after giving the licensee written notice

of noncompliance in order to protect the public's health, safety, or welfare or the environment. In order to suspend a license for more than ten days or to modify or revoke a license, the director shall conduct a hearing on the action. The hearing shall be held before the eleventh day following the day on which the director issued written notice to the licensee of the time, place, and nature of the hearing.

(3) Following such hearing, the director may:

(a) Place the licensee on probation for up to one year;

(b) Suspend the license for a period of time or until the director determines that the licensee is in compliance with the act and regulations adopted and promulgated under it and any order issued by the department;

(c) Modify the license to place more restrictions or different conditions upon its use; and

(d) Revoke the license for good cause shown.

Sec. 24. (1) A person claiming damages from pesticide application may file with the department a written statement claiming that the person has been damaged. The report shall be filed as soon as possible following the day of the alleged occurrence.

(2) On receipt of a report if the department has reasonable cause to believe that a violation of the Pesticide Act has occurred, it shall investigate such report to determine if any violation has occurred and if any further enforcement action shall be taken under the act. The department shall notify the licensee, owner, or lessee of the land on which the alleged act occurred and any other person who may be charged with responsibility for the damages claimed. The department shall furnish copies of the report to such licensee, owner, lessee, or other person on request.

(3) The department shall inspect damages whenever possible and shall report its findings to the person claiming damage and to the person alleged to have caused the damage. The claimant shall permit the department and the licensee to observe, within reasonable hours, the land or nontarget organism alleged to have been damaged.

(4) Failure to file a report shall not bar maintenance of a civil or criminal action. If a person fails to file a report and is the only person claiming injury from the particular use or application of a pesticide, the department may, if in the public interest, refuse to hold a hearing for the denial, suspension, or revocation of a license issued under the act to the person alleged to have caused the damage.

Sec. 25. It shall be unlawful for any person:

(1) To distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through a point outside this state, any of the following:

(a) A pesticide that has not been registered or whose registration has been canceled or suspended under the Pesticide Act;

(b) A pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration;

- (c) A pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by the act and any regulations adopted under the act;
- (d) A pesticide that is adulterated;
- (e) A pesticide or device that is misbranded;
- (f) A pesticide in a container that is unsafe due to damage;
- (g) A pesticide which differs from its composition as registered; or
- (h) A pesticide that has not been colored or discolored as required by the Pesticide Act or the federal act;
- (2) To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for by the Pesticide Act or a rule or regulation adopted under the act;
- (3) To add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the act or any rule or regulation adopted and promulgated under the act;
- (4) To use or cause to be used a pesticide contrary to the act, to the labeling of the pesticide, or to a rule or regulation of the department limiting the use of the pesticide, except that it shall not be unlawful to (a) apply a pesticide at any dosage, concentration, or frequency less than that specified on the labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency, (b) apply a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the labeling specifically states that the pesticide may be used only for the pests specified on the labeling, (c) employ any method of application not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified on the labeling, (d) mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling, (e) use a pesticide in conformance with section 136c, 136p, or 136v of the federal act or section 5 of this act, or (f) use a pesticide in a manner that the director determines to be consistent with the purposes of the Pesticide Act;
- (5) To handle, transport, store, display, or distribute a pesticide in a manner that violates any provision of the act or a rule or regulation adopted and promulgated under the act;
- (6) To dispose of, discard, or store a pesticide or pesticide container in a manner that the person knows or should know is:
- (a) Likely to cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects;
- (b) Likely to pollute a water supply or waterway; or
- (c) A violation of the Environmental Protection Act;
- (7) To use for the person's advantage or reveal, other than to a properly designated state or federal official or employee, to a physician, or in emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired

under the Pesticide Act and marked as privileged or confidential by the registrant;

(8) To commit an act for which a certified applicator's license may be suspended, modified, revoked, or placed on probation under section 23 of this act;

(9) To knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide in a manner that causes bodily injury to a human or that pollutes ground water, surface water, or a water supply;

(10) To fail to pay all fees and penalties as prescribed by the act and the rules and regulations adopted and promulgated pursuant to the act;

(11) To refuse to keep and make available for examination and copying by the department all books, papers, records, and other information necessary for the enforcement of the act;

(12) To hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(13) To violate any state management plan developed or approved by the department;

(14) To distribute or advertise any restricted-use pesticide for some other purpose other than in accordance with the Pesticide Act and the federal act;

(15) To use any pesticide which is under an experimental-use permit which is contrary to the provisions of such permit;

(16) To fail to follow any order of the department;

(17) To knowingly falsify all or part of any application for registration or licensing or any other records required to be maintained pursuant to the Pesticide Act; and

(18) To violate any other provision of the act.

Sec. 26. (1) Any person who commits an unlawful act under the Pesticide Act, any rules and regulations adopted and promulgated under the act, or any final order of the department shall (a) be guilty of a Class III misdemeanor and, upon a subsequent conviction thereof, be guilty of a Class I misdemeanor and (b) be subject to a restraining order, a temporary or permanent injunction, or a mandatory injunction if such person has violated, is violating, or is threatening to violate the act, the rules and regulations adopted and promulgated pursuant to the act, or any final order of the department. 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 the violation of the act 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.

(3) Nothing in this section shall be construed to require the director to report all acts for prosecution if in the opinion of the director the public interest will best be served through other administrative or civil procedures.

Sec. 27. (1) Any person who violates any provision of the Pesticide Act, the rules and regulations adopted and promulgated under the act, or any final order of the department may be subject to a civil fine of not more than fifteen thousand dollars for each offense, and in the case of a continuing violation, each day of violation shall constitute a separate offense. 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 the violation of the act 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.

Sec. 28. Whenever the director has reason to believe that any person has violated any provision of the Pesticide Act or any rule or regulation adopted and promulgated pursuant to the act, a hearing notice may be issued requiring the person to appear before the director (1) to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. If after a hearing the director finds such person to be in violation of the act or the rules and regulations, he or she shall enter an order requiring the person to cease and desist from the specific act, practice, or omission, (2) to determine whether an administrative fine should be imposed or levied against the person pursuant to subdivision (8) of section 5 of this act, or (3) to determine whether the license of such person should be suspended, modified, placed on probation, revoked, or denied.

Such hearing notice shall set forth the alleged violation, the time and place of the hearing, and the action being considered at such hearing. The hearing shall be conducted as a contested case under the Administrative Procedure Act. Notice of the hearing shall be by certified mail, return receipt requested, or by personal service upon the alleged violator.

Sec. 29. Whenever a violation of the Pesticide Act has occurred, the following shall be considered when determining the severity or amount of any administrative or civil fine, the issuance of a cease and desist order, or the disposition of any license:

(1) The culpability and good faith of and any past violations by such person;

(2) The seriousness of the violation, including the amount of any actual or potential risk to human health or environment; and

(3) The extent to which the person derived financial gain as a result of permitting or committing the violation, including a determination of the size of the company itself and the impact on it.

Sec. 30. (1) All money collected as a civil or an administrative fine shall be remitted to the State Treasurer for credit to the permanent school fund.

(2) Any civil or administrative fine which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper forum of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property.

Sec. 31. (1) A pesticide dealer or a commercial, noncommercial, or private applicator or an applicant for any such license shall not allow a final judgment against the applicant or licensee for damages arising from a violation of a provision of the Pesticide Act to remain unsatisfied for a period of more than thirty days.

(2) Failure to satisfy within thirty days a final judgment resulting from any activity regulated under the act shall result in automatic suspension or denial of the applicable license.

Sec. 32. Notwithstanding any other provision of the Pesticide Act, the duties and responsibilities of the department under the act shall be subject to adequate federal, cash, and general funding appropriation being made by the Legislature. If adequate funds are not made available under the act, the department shall submit a revised state pesticide plan to the federal agency outlining the current program.

Sec. 33. Any person aggrieved by any order of the department may appeal such order to the district court. Such appeal shall be in accordance with the Administrative Procedure Act.

Sec. 34. Sections 15 to 22 of this act shall become operative sixty days after the state pesticide plan is approved by the administrator according to section 136w-1 of the federal act.

Sec. 35. That section 2-958, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-958. (1) There is hereby authorized to be established a noxious weed control fund for each control authority, which fund shall be available for expenses authorized to be paid from such fund, including necessary expenses of the control authority in carrying out its duties and responsibilities under the Noxious Weed Control Act. The weed control superintendent within the county shall (a) ascertain and tabulate each year the approximate amount of land infested with noxious weeds and its location in the county, (b) ascertain and prepare all information required by the county board in the preparation of the county budget, including actual and expected revenue from all sources, cash balances, expenditures, amounts proposed to be expended during the year, and working capital, and (c) transmit such information tabulated by the control authority to the county board not later than June 1 of each year. On the basis of such information, the county board shall make a tax levy each year for the purpose of paying the expenses authorized to be paid from the noxious weed control fund. Funds so collected shall be deposited to such noxious weed control fund.

(2) There is hereby created the Noxious Weed Cash Fund.

The fund shall consist of proceeds raised from fees imposed for the registration of ~~economic poisons~~ pesticides and earmarked for the fund pursuant to section ~~2-2603~~ 13 of this act and any reimbursement funds for control work done pursuant to subdivision (1)(b)(vi) of section 2-954. An amount from the General Fund matching the earmarked proceeds shall be appropriated for and deposited in the Noxious Weed Cash Fund annually. The Department of Agriculture shall request matching funds from the General Fund based upon the prior year's revenue earmarked for the Noxious Weed Cash Fund. The fund shall be administered and used by the director to maintain the noxious weed control program and for expenses directly related to the program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 36. That section 71-2510, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2510. The provisions of sections 71-2502 to 71-2511 shall not apply to sales of poisons made to those practitioners of the healing arts, named in section 71-102, who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501, ~~or~~ to sales made by any manufacturer, wholesale dealer, or licensed pharmacist to another manufacturer, wholesale dealer, or licensed pharmacist, ~~or~~ to a hospital, college, school, or scientific or public institution, or to any person using any of such poisons in the arts; or for industrial, manufacturing, or agricultural purposes; and believed to be purchasing any poison for legitimate use, ~~nor shall it apply or~~ to the sales of ~~economic poisons~~ pesticides used in agricultural and industrial arts; or products used for the control of insect or animal pests or weeds or fungus diseases, ~~if~~ ~~:-PROVIDED:-~~ that in all such cases, except sales for use in industrial arts, manufacturing, or processing, the poisons are labeled in accordance with the provisions of section 71-2502.

Sec. 37. That section 81-2,162.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.04. (1) Any packaged soil conditioner distributed in this state, except custom-blended products, shall have placed on or affixed to the package a label stating clearly and conspicuously (a) the net weight or measure of the product, (b) the information required by subdivisions (1)(c) and (d) of section 81-2,162.03, (c) the total percentage of the active ingredients in the soil conditioner, (d) the identification and percentage of each individual active ingredient, (e) the total percentage of the inactive ingredients, (f) the identification and percentage of each individual inactive ingredient which comprises more than two percent of the entire soil conditioner, and (g) under a category entitled other inactive ingredients, the total percentage of the remaining inactive ingredients which individually do not comprise two percent or more of the soil conditioner.

(2) If any soil conditioner is distributed in bulk, a written or printed statement of the weight and the information required by subdivisions (1)(c) and (d) of section 81-2,162.03 and by subdivisions (1)(c)

through (g) of this section shall accompany delivery and be supplied to the purchaser.

(3) Whenever a soil conditioner is so comprised as to be recognized by a name commonly understood by ordinary individuals, such name shall be prominently and conspicuously displayed on the label.

(4) Notwithstanding any other provision of the Nebraska Commercial Fertilizer and Soil Conditioner Act, any soil conditioner which is also a pesticide, labeled in conformance with ~~sections 2-2601 to 2-2621~~ the Pesticide Act, shall be deemed to be labeled in conformance with ~~such act~~ the Nebraska Commercial Fertilizer and Soil Conditioner Act.

Sec. 38. Sections 7 to 14, 35, 36, 37, and 39 of this act shall become operative January 1, 1994. The other sections of this act shall become operative on their effective date.

Sec. 39. That original sections 2-958, 71-2510, and 81-2,162.04, Reissue Revised Statutes of Nebraska, 1943, and also sections 2-2601 to 2-2614 and 2-2616 to 2-2621, Reissue Revised Statutes of Nebraska, 1943, are repealed.