

LEGISLATIVE BILL 871

Approved by the Governor March 1, 1988

Introduced by R. Johnson, 34

AN ACT relating to agriculture; to amend sections 2-3005, 2-3008, 2-3108 to 2-3110, 2-3501 to 2-3504, 2-3506, 2-3514, 2-3517, 2-3519 to 2-3524, 2-4301, 2-4326, and 81-2,162.14, Reissue Revised Statutes of Nebraska, 1943, and sections 2-3914, 2-3917, 2-3928, 2-3937.01, 2-3938, 2-3941, and 2-3945, Revised Statutes Supplement, 1986; to provide powers and duties for the Department of Agriculture and county attorneys; to create a fund; to provide for a hearing; to provide fees; to redefine terms; to change provisions relating to milk; to eliminate a special fund; to delete obsolete language; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 2-3005, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3005. The State Veterinarian, subject to the approval of the Director of Agriculture, shall adopt and promulgate such rules and regulations as are needed to carry out the purposes and intent of ~~sections 2-3001 to 2-3008, PROVIDED, that the Nebraska Poultry Disease Control Act.~~ As ~~as~~ far as practical, the disease provisions of the rules and regulations officially promulgated by the United States Department of Agriculture, commonly known and cited as the National Poultry ~~and Turkey~~ Improvement Plan, shall be adopted (1) to establish and maintain breeding poultry flocks and hatcheries as pullorum and typhoid clean, (2) to require poultry entering exhibitions to be pullorum-typhoid tested negative, or originate in a typhoid or pullorum clean flock, and (3) to assure that only pullorum and typhoid clean breeding poultry and hatching eggs are moved into and within Nebraska.

Sec. 2. That section 2-3008, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3008. (1) Any person violating the

provisions of sections 2-3001 to 2-3008 Nebraska Poultry Disease Control Act or the rules and regulations adopted and promulgated under the provisions of sections 2-3001 to 2-3008 act shall be guilty of a Class III misdemeanor.

(2) It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified by the Department of Agriculture of such violation or threatened violation, to pursue appropriate proceedings pursuant to subsection (1) or (3) of this section without delay.

(3) In order to insure compliance with the Nebraska Poultry Disease Control Act, the Department of Agriculture may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

Sec. 3. That section 2-3108, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3108. The director is authorized and directed to adopt and promulgate rules and regulations for the establishment of minimum standards for laboratories, equipment, and personnel used in soil or plant analysis and such other rules and regulations as are necessary to the proper administration and enforcement of the Nebraska Soil and Plant Analysis Laboratory Act. In provisions of sections 2-3101 to 2-3110, PROVIDED, that in formulating proposed rules and regulations, the director shall consult with representatives of the fertilizer industry, representatives of the laboratories in this state, and with the University of Nebraska College of Agriculture. All rules and regulations shall be established in accordance with the procedure defined in the Administrative Procedure Act.

Sec. 4. That section 2-3109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3109. (1) Any person who shall violate violates any provision of sections 2-3101 to 2-3110 the Nebraska Soil and Plant Analysis Laboratory Act for which no specific penalty is provided or any rule or

regulation made pursuant thereto, shall be guilty of a Class IV misdemeanor.

(2) It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, to pursue appropriate proceedings pursuant to subsection (1) or (3) of this section without delay.

(3) In order to insure compliance with the Nebraska Soil and Plant Analysis Laboratory Act, the department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

Sec. 5. That section 2-3110, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3110. The expenses for the administration and enforcement of sections 2-3101 to 2-3110 shall be paid from a special fund to be used only for such purposes. All fees collected by the director under the Nebraska Soil and Plant Analysis Laboratory Act provisions of sections 2-3101 to 2-3110 shall be remitted promptly by the director to the State Treasurer for deposit in the state treasury to the credit of such fund the Soil and Plant Analysis Laboratory Cash Fund, which fund is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the Nebraska Soil and Plant Analysis Laboratory Act. Any money in the special fund established for the Nebraska Soil and Plant Analysis Laboratory Act on the effective date of this act shall be transferred to the Soil and Plant Analysis Laboratory Cash Fund. Any money in the Soil and Plant Analysis Laboratory Cash Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 6. That section 2-3501, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3501. It is hereby declared to be the public policy of the State of Nebraska that consumers of shell eggs in this state be assured of the quality and

quantity of shell eggs purchased. In furtherance of this policy, the Legislature hereby declares it to be its intent that shell eggs purchased by consumers in this state shall be quality graded and weight classified in accordance with procedures established under the Nebraska Graded Egg Act, provisions of sections 2-3501 to 2-3525, which procedures shall, insofar as practicable, be consistent with those adopted by the United States Department of Agriculture under the Egg Products Inspection Act, 21 U.S.C. 1031 et seq., and the Agricultural Marketing Act of 1946, 7 U.S.C. 1621 et seq.

Sec. 7. That section 2-3502, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3502. As used in sections 2-3501 to 2-3525 the Nebraska Graded Egg Act, unless the context otherwise requires:

(1) Consumer shall mean any person who buys shell eggs for his or her own consumption and not for resale;

(2) Department shall mean the Department of Agriculture;

(3) Director shall mean the Director of Agriculture;

(4) Egg handler shall mean any person who engages in any business in commerce which involves buying or selling any shell eggs, or processing any shell egg products. Egg handler shall include, but not be limited to, persons who assemble, collect, break, process, grade, package, or wholesale shell eggs;

(5) Exterior condition of a shell egg shall mean the cleanliness and shape of the shell of the egg, and whether the shell is whole, or is broken or cracked;

(6) Food purveyors shall mean all restaurants, cafeterias, institutions, hotels, and ~~all~~ other establishments where shell eggs are offered for sale to consumers for immediate consumption, either in the shell or in processed form;

(7) Graded eggs shall mean shell eggs which have been graded as to quality and classified as to weight according to the Nebraska Graded Egg Act provisions of sections 2-3501 to 2-3525 and the rules and regulations adopted and promulgated under sections 2-3501 to 2-3525 such act;

(8) Interior condition of a shell egg shall mean the condition of the yolk, the white, and the air cell of the shell egg;

(9) Producer shall mean any person engaged in

the production of shell eggs in the State of Nebraska;

(10) Retailer shall mean any person who sells shell eggs to the consumer;

(11) Sell shall include offer, ~~for sale,~~ expose, ~~for sale,~~ or have in possession for sale, exchange, barter, or trade;

(12) Shell eggs shall mean eggs of the domesticated chicken; and

(13) Shell egg packer shall mean any person engaged in the sorting of eggs from sources other than or in addition to his or her own production, into their various qualities, either mechanically or by other means.

Sec. 8. That section 2-3503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3503. (1) Quality grades of shell eggs shall be designated as follows:

- (a) Fresh Fancy Quality or Grade AA;
- (b) Grade A;
- (c) Grade B;
- (d) Grade C;
- (e) Dirty;
- (f) Check;
- (g) Loss;
- (h) Inedible; and
- (i) Such other quality grades as the

department shall adopt and promulgate by rule or regulation. Additional quality grades may be adopted only if such grades are adopted in the regulations promulgated by the United States Department of Agriculture under the Egg Products Inspection Act.

(2) The quality grade of shell eggs shall be determined by examination of the interior and exterior condition of each individual shell egg.

(3) The department shall have the authority to adopt and promulgate rules and regulations establishing the following:

- (a) Interior and exterior quality standards for each quality grade of shell eggs;
- (b) Acceptable procedures and conditions for grading shell eggs; and
- (c) Packing tolerances for each quality grade of shell eggs.

Sec. 9. That section 2-3504, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3504. (1) Weight classifications of shell eggs shall be designated as follows:

- (a) Jumbo;
- (b) Extra Large;
- (c) Large;
- (d) Medium;
- (e) Small;
- (f) Pee Wee; and

(g) Such other weight classifications as the department shall adopt and promulgate by rule or regulation. Additional weight classifications may be adopted only if such weights are adopted in the regulations promulgated by the United States Department of Agriculture under the Egg Products Inspection Act.

(2) The department shall have the authority to adopt and promulgate rules and regulations to establish minimum weights for each weight classification with respect to:

- (a) Individual shell eggs;
- (b) Lots of one dozen shell eggs;
- (c) Lots of thirty dozen shell eggs; and
- (d) Lots of shell eggs greater than thirty

dozen.

Sec. 10. That section 2-3506, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3506. It shall be unlawful to prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, or sell graded eggs in bulk or in containers and subcontainers; ~~graded eggs~~; unless each container or subcontainer of such eggs is marked with the full, correct, and unabbreviated designation of size and quality of the eggs therein; in accordance with the standards prescribed in the Nebraska Graded Egg Act sections 2-3501 to 2-3525 and the rules and regulations adopted ~~under sections 2-3501 to 2-3525~~ and promulgated under the act.

Sec. 11. That section 2-3514, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3514. It shall be unlawful to place shell eggs in unsanitary containers. Containers shall be considered sanitary if they are structurally sound; and free of putrid odors, visible mold, evidence of insect and rodent infestation, and adhering egg and fecal matter.

Sec. 12. That section 2-3517, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3517. (1) The provisions of the Nebraska Graded Egg Act sections 2-3501 to 2-3525 shall not apply

to the sale of shell eggs by any producer with an annual shell egg production from a flock of three thousand hens or less.

(2) ~~The provisions of section~~ Section 2-3512 shall not apply to any person exempt from the comparable provisions of the Egg Products Inspection Act and the regulations thereunder, by virtue of the provisions of 7 CFR 59.100.

(3) The license and inspection fee requirements of section 2-3520 shall not apply to egg handlers whose primary food-related business activity is not egg handling, but is one for which a permit is held pursuant to ~~sections 81-216-01 to 81-216-37~~ the Nebraska Pure Food Act.

Sec. 13. That section 2-3519, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3519. (1) The department shall adopt and promulgate, by rules and regulations, to prescribe methods of selecting samples of lots or containers of shell eggs which shall be reasonably calculated to produce by such sampling fair representations of the entire lots or containers sampled. Any sample so taken shall be prima facie evidence, in any court in this state, of the true condition of the entire lot in the examination of which such sample was taken. Insofar as practicable, the methods of sampling prescribed in the rules and regulations under this section shall be the same as those prescribed by the United States Department of Agriculture under the Egg Products Inspection Act.

(2) The department, through its agents, may enter any premises within the state where shell eggs are held, during ordinary business hours, and may inspect representative samples of such eggs and containers for the purpose of determining whether or not any provision of ~~sections 2-3501 to 2-3525~~ the Nebraska Graded Egg Act has been violated.

(3) Any agent of the department may, while enforcing ~~the provisions of sections 2-3501 to 2-3525~~ the Nebraska Graded Egg Act, seize and hold for evidence any shell eggs held to be in violation of any provisions of ~~sections 2-3501 to 2-3525~~ the act.

(4) Any shell eggs found by agents of the department to be in violation of ~~the provisions of sections 2-3501 to 2-3525~~ the Nebraska Graded Egg Act may be ordered off sale by the department. Further disposition of such eggs shall only be in accordance with the written or oral permission of the department, except ; PROVIDED, that the department shall release all

shell eggs ordered off sale which have been brought into conformity with the provisions of sections 2-3501 to 2-3525 act.

(5) Any person affected by action taken by the department under subsection (3) or (4) of this section shall be advised that such person may request in writing, within ten days of such action, a hearing before the director or his or her designated representative on such action. The department shall proceed to hearing within seventy-two hours after receiving the written request. If no written request for hearing is filed within the ten days, the department's action shall be sustained.

Sec. 14. That section 2-3520, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3520. There shall be paid to the department an annual license fee of two dollars and fifty cents and an inspection fee based on volume, as follows:

(1) Retailers:

(a) Not more than ten thirty-dozen cases annual average per week, the sum of five dollars;

(b) More than ten thirty-dozen cases; but not more than twenty-five such cases annual average per week, the sum of seven dollars and fifty cents; and

(c) More than twenty-five thirty-dozen cases annual average per week, the sum of ten dollars; and

(2) Egg handlers:

(a) Not more than ten thirty-dozen cases annual average per week, the sum of five dollars;

(b) More than ten thirty-dozen cases but not more than two hundred such cases annual average per week, the sum of twenty-five dollars;

(c) More than two hundred thirty-dozen cases but not more than five hundred such cases annual average per week, the sum of fifty dollars;

(d) More than five hundred thirty-dozen cases but not more than one thousand such cases annual average per week, the sum of seventy-five dollars;

(e) More than one thousand thirty-dozen cases but not more than fifteen hundred such cases annual average per week, the sum of one hundred dollars;

(f) More than fifteen hundred thirty-dozen cases but not more than two thousand such cases annual average per week, the sum of one hundred twenty-five dollars;

(g) More than two thousand thirty-dozen cases but not more than twenty-five hundred such cases annual average per week, the sum of one hundred fifty dollars;

and

(h) More than twenty-five hundred thirty-dozen cases annual average per week, the sum of two hundred dollars.

All licenses in effect on May 31, 1981, and any licenses issued following May 31, 1981, and before July 31, 1982, shall expire on July 31, 1982. All licenses issued on and after August 1, 1982, Application for a license shall be made to the department on forms prescribed and furnished by the department. Licenses shall expire on July 31 of the year following issuance and shall be renewed on or before August 1 of each year. The license fee and the inspection fee shall be paid at the time of the initial application for a license and at the time of each succeeding application for renewal.

The inspection fee shall be based upon the annual average per-week volume during the preceding twelve-month period ending June 30. If no annual average per-week volume is available from the preceding twelve-month period, the inspection fee shall be based upon the estimated per-week volume for the upcoming year.

Sec. 15. That section 2-3521, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3521. The proceeds of license and inspection fees shall be paid into the state treasury by the department and placed by the State Treasurer in the Graded Egg Fund, which is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the Nebraska Graded Egg Act. All expenditures in connection with the administration of sections 2-3501 to 2-3525 shall be made from such fund, subject to appropriation by the Legislature. Any money in the Graded Egg Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259 72-1269.

Sec. 16. That section 2-3522, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3522. The department shall have the authority to adopt and promulgate all necessary and reasonable rules and regulations to fully carry out the intent and purposes of sections 2-3501 to 2-3525 the Nebraska Graded Egg Act. When applicable, and insofar as practicable, such rules and regulations shall be consistent with those adopted by the United States Department of Agriculture, Agricultural Marketing

Service, under the Egg Products Inspection Act.

Sec. 17. That section 2-3523, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3523. Licenses issued by the department pursuant to the provisions of section 2-3520 may be deferred, suspended, or revoked by the director, following public hearing pursuant to the provisions of the Administrative Procedure Act, for violation of the provisions of sections 2-3501 to 2-3525 Nebraska Graded Egg Act or the rules and regulations adopted and promulgated under sections 2-3501 to 2-3525 such act.

Sec. 18. That section 2-3524, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3524. (1) Any person violating the provisions of sections 2-3501 to 2-3525 Nebraska Graded Egg Act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than five hundred dollars Class IV misdemeanor.

(2) It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, to pursue appropriate proceedings pursuant to subsection (1) or (3) of this section without delay.

(3) In order to insure compliance with the Nebraska Graded Egg Act, the department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

Sec. 19. That section 2-3914, Revised Statutes Supplement, 1986, be amended to read as follows:

2-3914. As used in the Nebraska Manufacturing Milk Act, unless the context otherwise requires:

(1) Department shall mean the Department of Agriculture;

(2) Director shall mean the Director of Agriculture or his or her duly authorized agent or designee;

(3) License shall mean a license issued under the Nebraska Manufacturing Milk Act act by the director;

(4) Fieldman shall mean an individual qualified and trained in the sanitary methods of production and handling of milk as set forth herein in the act, and generally employed by a processing or manufacturing plant for the purpose of dairy farm inspections and quality control work;

(5) Inspector shall mean an employee of the Department of Agriculture, department who is qualified, trained, and authorized to perform dairy farm or plant inspections and raw milk grading and trained to perform inspections under the act;

(6) Producer shall mean the person or persons who exercise control over the production of the milk delivered to a processing plant or receiving station for manufacturing purposes; and those who receive payment for this product;

(7) Dairy farm or farm shall mean a place or premises where one or more milking cows or goats are kept, a part or all of the milk produced thereon being delivered, sold, or offered for sale to a plant for manufacturing purposes;

(8) Dairy plant, plant, or receiving station shall mean any place, premises, or establishment where milk or dairy products are received or handled for processing or manufacturing or prepared for distribution. When plant is used in connection with the production, transportation, grading, or use of milk, it shall mean any plant that handles or purchases milk for manufacturing purposes, and when used in connection with minimum specifications for plants or licensing of plants, it shall mean only those plants that manufacture dairy products;

(9) Transfer station shall mean any place, premises, or establishment where milk for manufacturing purposes or manufactured milk products are transferred directly from one transport tank to another;

(10) Hauler-sampler shall mean any individual who transports raw milk and raw milk products for manufacturing purposes to or from a milk plant, a receiving station, or a transfer station and who grades or samples such milk;

(11) Milk shall mean the normal lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy goats or cows. Milk includes shall include only milk for manufacturing purposes. Goat milk or commingled cow and goat milk may be used to manufacture dairy products that are legally provided for in Title 21, Code of Federal Regulations, as it exists on July 1, 1986, or for

nonstandardized products when properly labeled;

(12) Milk for manufacturing purposes shall mean milk produced for processing and manufacturing into products not required by law to be of Grade A quality;

(13) Acceptable milk shall mean milk that qualifies under sections 2-3915 to 2-3917.01 as to sight and odor and that is classified acceptable for somatic cells, bacterial estimate, antibiotic residues, and sediment;

(14) Probational milk shall mean milk classified undergrade for somatic cells, bacterial estimate, or sediment that may be accepted by plants for specific time periods;

(15) Reject milk shall mean milk that does not qualify under sections 2-3915 to 2-3917.01;

(16) Adulterated milk and dairy products shall mean any milk or dairy products in which one or more of the conditions described in section 402 of the Federal Food, Drug, and Cosmetic Act, as it exists on July 1, 1986, exist;

(17) Dairy products shall mean products allowed to be made from milk for manufacturing purposes and not required to be of Grade A quality;

(18) Official methods shall mean Official Methods of Analysis of the Association of Official Analytical Chemists, a publication of the Association of Official Analytical Chemists;

(19) Standard methods shall mean Standard Methods for the Examination of Dairy Products, a publication of the American Public Health Association;

(20) 3-A sanitary standards shall mean the standards for dairy equipment formulated by the 3-A sanitary standards committees representing the International Association of Milk and Food Sanitarians, the United States Public Health Service, and the Dairy Industry Committee, and published by the International Association of Milk and Food Sanitarians;

(21) C-I-P or cleaned-in-place shall mean the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation;

(22) Person shall mean any individual, plant operator, partnership, corporation, company, firm, trustee, or association; and

(23) A state-certified laboratory shall mean an industry or commercial laboratory certified under the Grade A Interstate Milk Shippers Program or that has been certified by the department to perform official work for examination of milk for manufacturing purposes

as required in the Nebraska Manufacturing Milk Act.
 Sec. 20. That section 2-3917, Revised Statutes Supplement, 1986, be amended to read as follows:

2-3917. All dairy plants shall run the quality tests set out in this section in a state-certified laboratory and, except as provided in subdivision (8) of this section, report the results to the department upon request. The test methods shall be those set out in the standard methods and official methods.

(1) Milk shall be classified for bacterial estimates as follows by ~~one of the listed methods: Direct microscopic clump count~~; standard plate count; or plate loop count. Bacterial limits of individual producer milk shall not exceed one million per milliliter.

(2) Bacterial estimates shall be run at least four times each six months at irregular intervals at times designated by the director on representative samples of each producer's milk. When probational milk is disclosed, the producer shall be notified immediately, and a weekly testing schedule on that producer's milk shall be commenced. If acceptable milk is not disclosed after four weeks of testing, all further milk shall be rejected until subsequent testing indicates acceptable milk again being produced.

(3) All dairy plants shall smell all raw milk received. Milk failing to meet the odor standards of section 2-3916 shall be rejected.

(4) Laboratory examinations for the presence of unwholesome mammary secretions of an inflammatory, infectious, physiological, or environmental origin shall be conducted at least four times each six months at irregular intervals at times designated by the director on representative samples of each producer's milk. Such examinations shall begin with a screening test to determine whether or not the sample exceeds a Wisconsin Mastitis Test result of eighteen millimeters or higher.

(5) If a sample exceeds the screening test results set out in subdivision (4) of this section, either of the following tests may be used to obtain an official result:

(a) Direct microscopic somatic cell count; or equivalent; or

(b) Electronic somatic cell-counting procedure. Whenever an official result indicates a somatic cell count of more than one million somatic cells per milliliter, the procedure set out under

subdivision (6) of this section shall be applied.

(6) Whenever any two out of four consecutive somatic cell counts exceed one million per milliliter, the producer shall be sent a written notice by the department. A producer sample shall be taken between three and twenty-one days after the second excessive count. If that sample indicates an excessive count, the producer's milk shall be rejected until subsequent testing indicates a somatic cell count of less than one million cells per milliliter. For three weeks after the acceptable count is obtained, the producer's milk shall be tested at least once a week, but no more than twice a week. Testing at this frequency shall continue, if necessary, until three consecutive acceptable counts are obtained, after which testing may return to the routine frequency prescribed in subdivision (4) of this section.

(7) Milk from cows known to be infected with mastitis, milk containing residues of antibiotics or other drugs, or milk containing pesticides or other chemical residues in excess of the established limits shall not be sold or offered for sale for human food. The milk shall be disposed of. Cows that secrete abnormal milk shall be milked last or with separate equipment. This milk shall be excluded from the supply. Milk from cows treated with antibiotics shall be excluded for such period of time as is necessary to have the milk free from antibiotic residues.

(8) Each producer's milk shall be tested by the plant at least four times each six months at irregular intervals at times designated by the director for antibiotic residues. Load samples may be tested in lieu of individual producer samples if all the producer samples are available to identify the responsible producer in case of positive results. Milk found to contain antibiotic residues shall be handled as prescribed in subdivision (7) of this section. State-certified laboratories shall immediately notify the department of antibiotic residues. When a producer's milk shows positive results, such producer shall immediately be cut off from all markets. The producer shall not be reinstated until subsequent testing shows the producer's milk to be free of antibiotic residues. Dairy plants shall not use any milk or dairy products known to contain unacceptable levels of antibiotic residues for the manufacture of milk or dairy products for human consumption.

(9) Each producer's milk shall be tested by the department at least once a year for residues of pesticides or other harmful chemicals. Milk found to

contain excessive residues of such substances shall be handled as prescribed in subdivision (7) of this section.

Sec. 21. That section 2-3928, Revised Statutes Supplement, 1986, be amended to read as follows:

2-3928. (1) At the dairy plant and the receiving station, there shall be an ample supply of both hot and cold water of safe and sanitary quality with adequate facilities for its proper distribution throughout the plant and protected against contamination. Water from other facilities, when officially approved, may be used for boiler feed water and condenser water provided that such water lines are completely separated from the water lines carrying the sanitary water supply, and the equipment is so constructed and controlled as to preclude contamination of product contact surfaces. There shall be no cross-connection between potable water lines and nonpotable water lines or between public and private water supplies. Bacteriological examinations shall be made of the plant's sanitary water supply taken at the plant at least twice a year. The results of all water tests shall be kept on file at the plant for which the test was performed.

(2) The location, construction, and operation of any well shall comply with rules and regulations of the Department of Health.

(3) Drinking water facilities of a sanitary type shall be provided in the plant and should be conveniently located.

(4) Convenient hand-washing facilities shall be provided, including hot and cold running water, soap or other detergents, and sanitary single-service towels or air driers. Such accommodations shall be located in or adjacent to toilet and dressing rooms and also at such other places in the plant as may be essential to the cleanliness of all personnel handling products. Vats for washing equipment or utensils shall not be used as hand-washing facilities. Containers shall be provided for used towels and other wastes. The containers may be metal or plastic, may be disposable or reusable, and shall have self-closing covers.

(5) Steam shall be supplied in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment. Culinary steam used in direct contact with milk or dairy products shall be free from harmful substances or extraneous material and only those boiler water additives approved by the department

shall be used, or a secondary steam generator shall be used, in which soft water is converted to steam and no boiler compounds are used. Steam traps, strainers, and condensate traps shall be used wherever applicable to insure a satisfactory and safe steam supply. Culinary steam shall comply with the recommended practices for Producing Culinary Steam for Processing Milk and Milk Products as published by the National Association of Food and Dairy Equipment Manufacturers on July 1, 1988.

(6) The method for supplying air under pressure which comes in contact with milk or dairy products or any product contact surfaces shall comply with the 3-A Accepted Practices for Supplying Air Under Pressure in effect July 1, 1986.

(7) Dairy wastes shall be properly disposed of from the plant and premises. The sewer system shall have sufficient slope and capacity to readily remove all waste from the various processing operations. Where a public sewer is not available, all wastes shall be properly disposed of so as not to contaminate milk equipment or to create a nuisance or public health hazard. Containers used for the collection and holding of wastes shall be constructed of metal, plastic, or other equally impervious material and kept covered with tight-fitting lids. Waste shall be stored in an area or room in a manner to protect it from flies and vermin. Solid wastes shall be disposed of regularly and the containers cleaned before reuse. Accumulation of dry wastepaper and cardboard shall be kept to a minimum and disposed of in a manner that is environmentally acceptable.

Sec. 22. That section 2-3937.01, Revised Statutes Supplement, 1986, be amended to read as follows:

2-3937.01. (1) No person shall adulterate milk or dairy products or manufacture, produce, process, distribute, sell, or offer for sale any adulterated milk or dairy products.

(2) If the department finds that milk, dairy products, or both are being manufactured, processed, produced, distributed, offered for sale, or sold in violation of the adulteration provisions of the Nebraska Manufacturing Milk Act, the department may issue and enforce a written or printed stop-sale, stop-use, or removal order to the person in charge of such milk or dairy products if the issuance of such an order is necessary for the protection of the public health, safety, or welfare. Such an order shall specifically describe the nature of the violation found. Such order

shall clearly advise the person in charge of the milk or dairy products that he or she may request an immediate hearing before the director on the matter. No such order may direct the involuntary and immediate disposal or destruction of any milk or dairy products until the person in charge of such milk or dairy products has been afforded an opportunity to be heard on the matter and an opportunity to appeal any determination of the director from such a hearing to a court of competent jurisdiction. The department may issue a stop-sale, stop-use, or removal order against milk or dairy products that are perishable even if the practical result of such an order is to bring about the involuntary disposal of such milk or dairy products when, in the opinion of the person issuing the order, no alternative course of action would sufficiently protect the public health, safety, or welfare under the circumstances.

(3) The department may color with a harmless edible dye any milk which is adulterated so that it may be identified as having been restricted from further distribution or sale or from being offered for sale.

Sec. 23. That section 2-3938, Revised Statutes Supplement, 1986, be amended to read as follows:

2-3938. The director may suspend a license or place on probation the holder of a license upon evidence of violation by the holder of any of the terms of the Nebraska Manufacturing Milk Act, or for interference with the director in the performance of his or her duties. The imposition of a suspension or probation shall require corrective action by the holder to the satisfaction of the department in order to have such suspension or probation removed.

The director may revoke a license for serious or repeated violations.

The director shall, before revoking a license or placing the holder of such license on probation for violation of the terms of the Nebraska Manufacturing Milk Act, give at least ten days' notice in writing containing a statement of the alleged violation and the time and place of such hearing. The notice may be served by delivery of a copy personally to the licensee or by mailing a copy to the last-known business address of the licensee. The hearing shall be conducted by the director or by a qualified employee of the department designated by the director as hearing officer. The parties may appear in person or by counsel. The licensee shall be afforded a full hearing on the charges

contained in the notice of hearing. All testimony shall be upon oath or affirmation, subject to cross-examination, and shall be reported verbatim and made a part of the record. The common law rules of evidence shall not apply, but evidence which is immaterial, irrelevant, or unduly repetitious or which is not of a sort upon which persons are accustomed to rely, shall be excluded. The director within a reasonable time after the hearing shall, upon the basis of the record made at the hearing, issue findings of fact, conclusions, and an order.

A decision of the director revoking a license may be appealed to the district court of Lancaster County. Such appeal shall be taken in the manner provided in section 60-420 for appeals from an order of the Director of Motor Vehicles suspending, canceling, or revoking a motor vehicle operator's license. The evidence presented at the hearing shall constitute the record on appeal. The court shall set aside the order, findings, and conclusions, if it finds that they are not in accordance with law or are not supported by substantial evidence.

Sec. 24. That section 2-3941, Revised Statutes Supplement, 1986, be amended to read as follows:

2-3941. (1) Each plant or any other person purchasing raw milk for manufacturing purposes from producers licensed under the Nebraska Manufacturing Milk Act shall employ, contract with, or otherwise provide for the services of a competent and qualified fieldman who shall be responsible for:

- (a) Informing new producers about the requirements of dairy farm sanitation;
- (b) Initial approval of new producers;
- (c) Submitting applications and water samples on new producers;
- (d) Notifying the department of all transfer producers within five days after they first provide milk to the plant;
- (e) Special inspections or duties upon request of the department; and
- (f) Advising the department of any circumstances that could be of public health significance.

In carrying out their duties and responsibilities under the Nebraska Manufacturing Milk Act, fieldmen shall perform the duties in the manner prescribed by the department.

- (2) As a condition precedent to performing

services as a fieldman, each individual desiring to so act shall obtain an annual fieldman's license from the department, which license shall expire on July 31 of the year following issuance. A fieldman's license shall be issued after a proper application has been made to the department accompanied by the license fee of twenty-five dollars and, for the initial applicant or a person whose fieldman's license has been previously revoked, after the fieldman has demonstrated his or her competence and qualifications to the department in the manner set out in subsection (3) of this section.

(3) Applicants for a fieldman's license shall demonstrate competence in evaluating and insuring the sanitary methods for producing and handling milk by passing an examination required by the department and successfully completing a training course prescribed by the department.

(4) The department may require fieldmen to annually maintain their level of competence by attending and participating in seminars or other educational activities arranged for by the department. Such activities arranged for by the department may be conducted with the assistance of the University of Nebraska. When such activities are required, the department may charge a fee to defray the expenses incurred, which fee may not exceed fifty dollars or the actual per person cost in conducting the seminar or program, whichever is less.

(5) The director may suspend a fieldman's license or place on probation the holder of such license upon evidence of violation by the holder of any of the terms of this section or for interference with the department in the enforcement of the Nebraska Manufacturing Milk Act. The imposition of a suspension or probation shall require corrective action by the holder to the satisfaction of the department in order to have such suspension or probation removed. The department shall be authorized, after due notice and an opportunity for a hearing, to revoke a fieldman's license for violation by the holder of the Nebraska Manufacturing Milk Act or the rules and regulations adopted and promulgated pursuant to such act, for failing to fully and properly carry out the duties of a fieldman as prescribed, or for failing to maintain the qualifications and level of competence required of a fieldman.

(6) No plant may operate at any time without the services of a licensed fieldman.

Sec. 25. That section 2-3945, Revised

Statutes Supplement, 1986, be amended to read as follows:

2-3945. Any person or licensee violating the Nebraska Manufacturing Milk Act, or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the director in performance of his or her duties in connection with the enforcement of such act or the rules and regulations adopted and promulgated issued by the ~~director~~ department, shall be guilty of a Class V misdemeanor.

It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, to pursue appropriate proceedings pursuant to section 2-3943 or this section without delay.

Sec. 26. That section 2-4301, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4301. Sections 2-4301 to 2-4327 and section 2-4318.01 shall be known and may be cited as the Agricultural Liming Materials Act.

Sec. 27. That section 2-4326, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4326. The department may issue and enforce a written or printed stop-sale, ~~use stop-use~~, or removal order to the owner or custodian of any lot of agricultural liming material. The department may order the owner or custodian to hold such material at a designated place when the department finds such material is being offered or exposed for sale by the owner or custodian in violation of ~~sections 2-4301 to 2-4327~~ the Agricultural Liming Materials Act or the rules and regulations adopted and promulgated by the department. Such material shall be released when ~~sections 2-4301 to 2-4327~~ the act or the rules and regulations have been complied with, such violations have otherwise been legally disposed of in writing, and all costs and expense incurred in connection with such material's holding have been paid. This section shall not apply if the owner or custodian is the ultimate consumer of the agricultural liming material and he or she has title to such materials.

Sec. 28. That section 81-2,162.14, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,162.14. The director may issue and enforce a written or printed ~~stop sale~~, use stop-sale.

stop-use, or removal order to the owner or custodian of any lot of commercial fertilizer or soil conditioner and may require the owner or custodian to hold any lot at a designated place when the director has reason to believe said the product is being offered or exposed for sale in violation of any of the provisions of this act the Nebraska Commercial Fertilizer and Soil Conditioner Act until the law has been complied with and such product is released in writing by the director or said the violation has been otherwise legally disposed of by written authority. The director shall release the product so withdrawn when the requirements of the provisions of this the act have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

Sec. 29. (1) Whenever the phrase sections 2-3001 to 2-3008 appears in sections 2-3002, 2-3003, and 2-3006, the Revisor of Statutes shall substitute the phrase the Nebraska Poultry Disease Control Act or, if appropriate, the phrase the act.

(2) Whenever the phrase sections 2-3101 to 2-3110 appears in sections 2-3102 and 2-3104, the Revisor of Statutes shall substitute the phrase the Nebraska Soil and Plant Analysis Laboratory Act.

(3) Whenever the phrase sections 2-3501 to 2-3525 appears in sections 2-3507, 2-3508, 2-3510, 2-3511, 2-3515, 2-3516, and 81-216.21, the Revisor of Statutes shall substitute the phrase the Nebraska Graded Egg Act.

(4) Whenever the phrase sections 2-4301 to 2-4327 appears in sections 2-4302, 2-4319, 2-4321, 2-4322, 2-4324, 2-4325, and 2-4327, the Revisor of Statutes shall substitute the phrase the Agricultural Liming Materials Act or, if appropriate, the phrase the act.

Sec. 30. That original sections 2-3005, 2-3008, 2-3108 to 2-3110, 2-3501 to 2-3504, 2-3506, 2-3514, 2-3517, 2-3519 to 2-3524, 2-4301, 2-4326, and 81-2,162.14, Reissue Revised Statutes of Nebraska, 1943, and sections 2-3914, 2-3917, 2-3928, 2-3937.01, 2-3938, 2-3941, and 2-3945, Revised Statutes Supplement, 1986, are repealed.