

## LEGISLATIVE BILL 1004

Passed over the Governor's veto April 9, 1990.

Introduced by Rogers, 41; Wehrbein, 2; Dierks, 40;  
Coordsen, 32

AN ACT relating to pseudorabies; to amend sections 54-2202, 54-2208, 54-2221, and 54-2223 to 54-2234, Reissue Revised Statutes of Nebraska, 1943, and sections 54-701.02 and 54-2201, Revised Statutes Supplement, 1989; to rename an act; to define and redefine terms; to provide a pseudorabies eradication and control program; to provide for an advisory committee; to provide for rules and regulations; to change provisions relating to expenses of testing; to provide a penalty; to eliminate a definition; to eliminate provisions relating to the development of an eradication plan; to harmonize provisions; to provide an operative date; and to repeal the original sections, and also section 54-2207, Reissue Revised Statutes of Nebraska, 1943, and section 54-2221.01, Revised Statutes Supplement, 1989.

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

Section 1. That section 54-701.02, Revised Statutes Supplement, 1989, be amended to read as follows:

54-701.02. The Legislature finds and declares that animal disease control is essential to the livestock industry and the health of the economy of this state. The Legislature further finds and declares that, without additional resources, the Department of Agriculture will not be able to (1) improve surveillance and compliance in regard to animal disease control to attain goals such as achieving and maintaining the United States Department of Agriculture's classification of Class Free State for brucellosis in cattle, (2) maintain and enhance the pseudorabies control and eradication program required by the Pseudorabies Control and Eradication Act, or (3) maintain current services to livestock producers due to the withdrawal of field staff from Nebraska by the Animal and Plant Health Inspection Service of the United States Department of Agriculture. The Department of Agriculture may employ special investigators pursuant to subdivision (7) of section

81-201 and other personnel deemed necessary to maintain and improve animal disease control in this state.

Sec. 2. That section 54-2201, Revised Statutes Supplement, 1989, be amended to read as follows:

54-2201. Sections 54-2201 to 54-2234 and sections 5 to 16 and 21 to 37 of this act shall be known and may be cited as the Pseudorabies Control and Eradication Act.

Sec. 3. That section 54-2202, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2202. For purposes of the Pseudorabies Control and Eradication Act, unless the context otherwise requires, the definitions found in sections 54-2203 to 54-2220 and sections 5 to 16 of this act shall be used.

Sec. 4. That section 54-2208, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2208. Official test shall mean any testing procedure recognized for use in the diagnosis of pseudorabies by (1) the United States Department of Agriculture and existing as of January 1, 1986 1990, in 9 C.F.R. part 85; or (2) the department in rules and regulations adopted and promulgated pursuant to the Pseudorabies Control and Eradication Act.

Sec. 5. Affected herd shall mean a herd in which livestock have been determined to be infected with pseudorabies by an official test or diagnosed by a veterinarian as having pseudorabies.

Sec. 6. Area testing shall mean testing of a random sample of each animal herd in a program area or other limited geographical area of the state established by the department.

Sec. 7. Circle testing shall mean testing of a random sample of each animal herd located within a distance established by the department of an animal herd which is affected with or quarantined for pseudorabies or is a qualified pseudorabies negative herd or any other animal herd as designated by the department.

Sec. 8. Cleanup testing shall mean testing done in an affected herd as part of a herd cleanup plan.

Sec. 9. First-point-of-concentration testing shall mean testing of culled breeding swine at the first concentration point to which the animals are moved.

Sec. 10. Herd cleanup plan shall mean a mutually acceptable written agreement developed by a herd owner, his or her veterinarian when applicable, and

regulatory personnel and approved by an epidemiologist of the department which is designed to eradicate pseudorabies from an animal herd pursuant to section 25 of this act.

Sec. 11. Private testing shall mean testing which is paid for by funds other than public funds.

Sec. 12. Program activity shall mean any activity required by the department for determining the presence of pseudorabies in animal herds or any activity relating to cleaning up herds found to be affected with pseudorabies, to depopulating herds pursuant to section 31 of this act, and to surveillance as part of the pseudorabies control and eradication program.

Sec. 13. Program area shall mean a portion of a county, an entire county, or a group of adjacent counties designated and approved by the department to be given priority assignment of a program activity and state funds.

Sec. 14. State committee shall mean the state pseudorabies advisory committee provided for in section 22 of this act.

Sec. 15. Status animal or herd shall mean an animal or herd for which a classification has been assigned or approved by the department.

Sec. 16. Surveillance shall mean testing done randomly to monitor for pseudorabies in the state or an area of the state.

Sec. 17. That section 54-2221, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2221. (1) The Pseudorabies Control and Eradication Act shall be administered by the Department of Agriculture, Bureau of Animal Industry. In administering such act, the department shall cooperate and may contract with appropriate local, state, or national organizations, public or private, for the performance of activities required or authorized pursuant to such act.

(2) In administering the Pseudorabies Control and Eradication Act and conducting the programs authorized under the act, the department may cooperate with the United States Department of Agriculture and insofar as reasonably practical, conform its activities to 9 C.F.R. part 857 existing as of January 1, 1986 1990.

Sec. 18. That section 54-2223, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2223. The department shall continually

conduct a pseudorabies control and eradication program. Under the program, the department shall quarantine and may require the pseudorabies testing of eligible animals that are exposed. Under the pseudorabies control and eradication program, the department shall also quarantine and require the pseudorabies testing of eligible animals imported into Nebraska in violation of pseudorabies-related importation requirements existing as of January 1, 1986 1990, in 9 C.F.R. part 85, or as recognized by the department in rules and regulations adopted and promulgated pursuant to the Pseudorabies Control and Eradication Act. The department may prohibit the addition of animals into infected affected or exposed herds.

It shall be unlawful for any person to remove any animal which has been placed in quarantine pursuant to the act from the place of quarantine until such quarantine on the animal is released by the department.

Any person violating this section shall be guilty of a Class III misdemeanor.

Sec. 19. That section 54-2224, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2224. For the protection of the livestock industry in Nebraska and to aid in achieving the purposes of the Pseudorabies Control and Eradication Act, the department shall regulate the sale and use of pseudorabies vaccine. The department may restrict the sale and use of pseudorabies vaccine and shall require detailed record keeping and reporting by persons involved in the sale, or use, or both, of the vaccine.

Sec. 20. That section 54-2225, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2225. The department shall adopt and promulgate rules and regulations to aid in implementing the Pseudorabies Control and Eradication Act. The rules and regulations may include, but shall not be limited to, provisions governing:

(1) The conduct of the feeder and breeding swine testing program, including provisions governing: (a) When, where, how, by whom, and how often testing is to be done; (b) what animals are to be tested; and (c) how test results are to be recorded and reported;

(2) The conduct of the pseudorabies control and eradication program, including provisions governing: (a) When, where, how, by whom, and how often testing is to be done; (b) what animals are to be tested; (c) how test results are to be recorded and reported; and (d)

the classification of herds;

(3) The issuance and release of pseudorabies quarantines and the requirements regarding the handling, movement, and disposition of animals under quarantine;

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

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

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

(7) The identification of animals subject to the ~~Pseudorabies Control Act act~~, including provisions governing: (a) Exposed and infected animals; (b) vaccinated animals; and (c) animals to be tested;

(8) Compliance with 9 C.F.R. part 857 existing on January 1, ~~1986~~ 1990, for pseudorabies control and eradication;

(9) Administration of the pseudorabies control and eradication program as provided in the act, subject to the availability of state funds, which shall be consistent with the State-Federal-Industry Program Standards for Pseudorabies Eradication existing on January 1, 1990, as approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services;

(10) The assessment and collection of fees for services provided and expenses, not to exceed actual costs, incurred under the ~~Pseudorabies Control Act act~~;

~~{10}~~ (11) The preparation, maintenance, handling, filing, and disposition of records and reports by persons subject to the act concerning the vaccination, testing, or movement of animals that may have been infected with or exposed to pseudorabies; and

~~{11}~~ (12) Any other areas deemed necessary by the department to effectively ~~control~~ eradicate pseudorabies.

Sec. 21. It is the intent of the Legislature to implement a pseudorabies control and eradication program consistent with the national pseudorabies control-eradication plan. The goal of the program is to eliminate pseudorabies from the livestock of the state by implementing a process of assessment, cleanup, and surveillance. The program shall be designed to use the present control procedures in place under and be administered as a part of the Pseudorabies Control and Eradication Act to begin the assessment of all animal herds in the state to determine where pseudorabies is found in the state, to begin the cleanup of all herds where pseudorabies is found, and to begin surveillance to achieve and maintain pseudorabies-free conditions in the state.

Sec. 22. The state pseudorabies advisory committee shall be a voluntary advisory committee composed of swine producers, animal scientists, state and federal regulatory officials, and other representatives of the swine industry. The state committee shall review the pseudorabies control and eradication program and make recommendations to state and federal animal health officials as appropriate and maintain liaison with other states and with the National Pseudorabies Control Board.

Sec. 23. The assessment of all animal herds in the state shall be accomplished by requiring two annual official tests as designated by the department of all animal herds within the state to locate and identify all affected herds within two years after the operative date of this act. The official tests for the assessment shall be done at the expense of the owner of the animals.

Sec. 24. The department shall use the results of the assessment of all animal herds in the state as a guide in prioritizing counties and areas of the state in which to use the resources of the state to begin the process of cleanup testing and surveillance.

Sec. 25. All quarantined animal herds shall be required to have a herd cleanup plan approved by the department. The department shall establish the standards for herd cleanup plans pursuant to the Pseudorabies Herd Plan Manual of the Livestock Conservation Institute existing on January 1, 1990.

Sec. 26. (1) The department shall develop statewide priorities for the expenditure of state funds for program activities.

(2) The department shall cooperate with the United States Department of Agriculture, Animal and

Plant Health Inspection Service, Veterinary Services, by recommending where and how federal funds allocated for pseudorabies eradication in Nebraska should be spent.

Sec. 27. Testing done pursuant to the pseudorabies control and eradication program by or for an accredited veterinarian approved by the department may be paid for by state funds if an agreement is entered into between the veterinarian and the department to stipulate the conditions under which the veterinarian will be paid. All testing done pursuant to the program shall be performed by or under the direct supervision of an accredited veterinarian, except that this shall not restrict an employee of the state or federal government in the performance of his or her duties under the Pseudorabies Control and Eradication Act or federal law. Payments for the testing shall be authorized by the department when funds are available. Testing which may be paid for when authorized by the department may include, but shall not be limited to:

- (1) Area testing;
- (2) First-point-of-concentration testing;
- (3) Circle testing;
- (4) Testing in the herd of origin which has had animals tested positive at or prior to slaughter;
- (5) Testing in affected herds when conducted as part of a herd cleanup plan; and
- (6) Testing of herds which have had sales to or purchases from affected herds.

Sec. 28. The department shall determine when and where area testing shall be done based on epidemiological evaluation.

Sec. 29. The department shall determine the radius of the circle within which circle testing will occur. Any herds tested and found to be affected within the circle shall form the nucleus of another circle.

Sec. 30. Cleanup testing may include one hundred percent of the animals for the purpose of removing infected animals or it may be a random sample of the affected herd to determine the current level of infection within the herd. The department shall adopt and promulgate rules and regulations for cleanup testing procedures and the expenditure of state funds in cleanup testing.

Sec. 31. The department shall establish limits on state funds to be used in cleanup testing or depopulation within a herd. The department shall establish a time limit within which such funds must be used.

Sec. 32. The department shall establish

criteria for random sampling requirements to be used for program testing.

Sec. 33. The department shall establish criteria for classification of concentration points based on the degree of exposure to nonstatus or quarantined animals and the practices in use at the concentration point.

Sec. 34. The department shall establish import, isolation, and retesting requirements for all animals imported into Nebraska and program areas within Nebraska.

Sec. 35. Restricted breeding and grower facilities may be approved by the department to produce replacement breeding swine as part of a herd cleanup plan. The department shall establish restrictions for such facilities.

Sec. 36. Restricted feeding facilities may be approved by the department to feed pseudorabies-quarantined feeder swine. The department shall establish restrictions for such facilities.

Sec. 37. The department shall establish procedures and criteria for surveillance consistent with the national pseudorabies control-eradication plan. Such procedures may include testing of samples collected at slaughter establishments, first-point-of-concentration testing, area testing, circle testing, or other random testing. Any animal testing positive at the time of surveillance testing shall be traced to the herd of origin. The department shall determine how the herd of origin will be sampled.

Sec. 38. That section 54-2226, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2226. (1) In order to insure compliance with the Pseudorabies Control and Eradication 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 under 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.

(2) ~~It shall be the duty of the~~ The county attorney of the county in which violations of the ~~Pseudorabies Control Act~~ act or the rules and regulations thereunder are occurring or about to occur



shall, when notified of such violation or threatened violation, ~~to~~ cause appropriate proceedings under subsection (1) of this section to be instituted and pursued without delay.

Sec. 39. That section 54-2227, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2227. The department may assess and collect reasonable fees for services provided and expenses incurred pursuant to its responsibilities under the Pseudorabies Control and Eradication Act. All fees assessed and collected pursuant to this section shall be deposited in remitted to the State Treasurer for credit to the Pseudorabies Control Cash Fund which is hereby created.

Sec. 40. That section 54-2228, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2228. The Pseudorabies Control Cash Fund shall consist of money appropriated by the Legislature and gifts, grants, fees, or charges from any source, including federal, state, public, and private sources. The fund shall be utilized for the purpose of carrying out the Pseudorabies Control and Eradication Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to ~~72-1269~~ 72-1276.

Sec. 41. That section 54-2229, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2229. In administering the Pseudorabies Control and Eradication Act, the agents and employees of the department shall have access to any premises where livestock may be, when such persons have probable cause to believe that such livestock may be infected with or may have been exposed to pseudorabies.

Sec. 42. That section 54-2230, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2230. Whenever pseudorabies testing is performed under the Pseudorabies Control and Eradication Act with respect to private treaty, the owner of the animals shall be responsible for gathering, confining, and restraining the animals to be tested and shall provide the necessary facilities and assistance. With respect to pseudorabies tests conducted at markets or concentration points, the responsibility for gathering, confining, and restraining the animals to be tested shall be borne by the owner of the establishment.

Sec. 43. That section 54-2231, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2231. All testing expenses incurred in compliance with the Pseudorabies Control and Eradication Act and the rules and regulations adopted and promulgated pursuant thereto shall be paid by the owner of the animal prior to the sale unless state funds are available pursuant to section 27 of this act.

Sec. 44. That section 54-2232, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2232. It shall be unlawful for a buyer to knowingly purchase or import feeder swine, breeding swine, or both from a seller who has not complied with the Pseudorabies Control and Eradication Act. It shall also be unlawful for a seller who has not complied with the ~~Pseudorabies Control Act~~ act to sell feeder swine, breeding swine, or both.

Sec. 45. That section 54-2233, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2233. Whenever animals are required or designated pursuant to the Pseudorabies Control and Eradication Act to move to a particular destination, it shall be unlawful to divert the animals from such destination without having first obtained permission from the department.

Sec. 46. That section 54-2234, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

54-2234. Any Except as provided in section 54-2223, any person who violates the Pseudorabies Control and Eradication Act or any rules and regulations adopted and promulgated pursuant thereto shall be guilty of a Class IV misdemeanor for the first offense and shall be guilty of a Class II misdemeanor for each subsequent offense.

Sec. 47. This act shall become operative on October 1, 1990.

Sec. 48. That original sections 54-2202, 54-2208, 54-2221, and 54-2223 to 54-2234, Reissue Revised Statutes of Nebraska, 1943, and sections 54-701.02 and 54-2201, Revised Statutes Supplement, 1989, and also section 54-2207, Reissue Revised Statutes of Nebraska, 1943, and section 54-2221.01, Revised Statutes Supplement, 1989, are repealed.