

## LEGISLATIVE BILL 110

Approved by the Governor February 14, 2007

Introduced by Erdman, 47

FOR AN ACT relating to agriculture; to amend section 2-3918, Reissue Revised Statutes of Nebraska; to adopt the Bovine Tuberculosis Act; to provide penalties; to harmonize provisions; to eliminate provisions relating to tuberculin testing; to repeal the original section; to outright repeal sections 54-706, 54-707, 54-708, 54-709, 54-710, 54-711, 54-712, 54-713, 54-714, 54-715, 54-716, 54-717, 54-718, 54-719, 54-720, 54-721, and 54-722, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Sections 1 to 17 of this act and the provisions of the Code of Federal Regulations and Bovine Tuberculosis Eradication Uniform Methods and Rules adopted by reference in section 4 of this act shall be known and may be cited as the Bovine Tuberculosis Act.

Sec. 2. The purpose of the Bovine Tuberculosis Act is to maintain Nebraska's status as a tuberculosis accredited free state through the use of monitoring and surveillance to maintain tuberculosis-free conditions within the state.

Sec. 3. For purposes of the Bovine Tuberculosis Act, the definitions found in the federal regulations and rules adopted by reference in section 4 of this act shall be used and:

(1) Accredited veterinarian means a veterinarian approved by the Administrator of APHIS to perform functions required by cooperative state-federal animal disease control and eradication programs;

(2) Animal means all vertebrate members of the animal kingdom except humans or wild animals at large;

(3) APHIS means the Animal and Plant Health Inspection Service of the United States Department of Agriculture;

(4) Bovine means cattle and bison;

(5) Department means the Department of Agriculture or its authorized designee;

(6) Designated accredited veterinarian means an accredited veterinarian trained and approved to conduct specific bovine tuberculosis tests such as the bovine interferon gamma assay, other bovine tuberculosis program activities, or both; and

(7) State Veterinarian means the veterinarian in charge of the Bureau of Animal Industry within the department or his or her designee, subordinate to the Director of Agriculture.

Sec. 4. (1) The Legislature hereby adopts by reference 9 C.F.R. part 77, except requirements relating to captive cervids, and the Bovine Tuberculosis Eradication Uniform Methods and Rules published by APHIS in effect on the effective date of this act as part of the Bovine Tuberculosis Act. If there is an inconsistency between such federal regulations and the Bovine Tuberculosis Act or between such Uniform Methods and Rules and the Bovine Tuberculosis Act, the requirements of the Bovine Tuberculosis Act shall control. If there is an inconsistency between such federal regulations and the Uniform Methods and Rules, the requirements of the federal regulations shall control, except in the definition of livestock where the definition in the Uniform Methods and Rules shall control.

(2) Certified copies of the portion of the federal regulations and the rules adopted by reference pursuant to this section shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and department.

Sec. 5. (1) The Bovine Tuberculosis Act shall be administered and enforced by the Bureau of Animal Industry of the department.

(2) In administering the act, the department may cooperate and contract with persons or appropriate local, state, or national organizations, public or private, for the performance of activities required or authorized pursuant to the act. The department may also cooperate with the APHIS in (a) the control and eradication of bovine tuberculosis in this state and (b) recommending where and how any available federal funds and state personnel and materials are allocated for the purpose of bovine tuberculosis control and eradication.

(3) In administering the act, the department shall have access to all livestock dealer and livestock auction market records to facilitate the traceback of affected, exposed, suspect, or reactor animals to the herd of origin or other point of original infection. Such records shall be maintained

for a minimum of five years and shall be made available to the State Veterinarian upon request during normal business hours.

(4) For purposes of making inspections, conducting tests, or both, agents and employees of the department shall have access to any premises where animals may be located. Any person who interferes or obstructs any agent or employee of the department in such work or attempt to obstruct or prevent by force the carrying on of such inspection, testing, or both is guilty of a Class II misdemeanor.

Sec. 6. Any person who discovers, suspects, or has reason to believe that any animal belonging to him, her, or another person or which he or she has in his or her possession or custody is exhibiting signs consistent with bovine tuberculosis shall immediately report such fact, belief, or suspicion to the State Veterinarian.

An owner or custodian of an animal exhibiting signs consistent with bovine tuberculosis shall submit such designated animal to be tested when ordered to do so by the State Veterinarian.

Sec. 7. (1) The department by rule and regulation may prescribe the manner, method, and system of testing livestock or any other animal suspected of being affected with or exposed to M. bovis under a cooperative program.

(2) The department may also adopt and promulgate any other rules and regulations necessary to carry out the Bovine Tuberculosis Act.

(3) Accredited veterinarians are authorized to apply only the caudal fold tuberculin test. Tuberculin tests shall be conducted by a veterinarian employed by the department or APHIS or by a designated accredited veterinarian. All tests are official tests and shall be reported to the State Veterinarian on an official bovine tuberculosis test chart. Such report shall include the official identification, age, sex, and breed of each animal and a record of all responses and test interpretations.

Sec. 8. (1) The State Veterinarian may immediately quarantine any animal and the premises on which such animal is located if bovine tuberculosis is suspected or has been diagnosed in an animal on such premises.

(2) Disclosure of bovine tuberculosis in any animal shall be followed by an epidemiologic investigation in accordance with the Bovine Tuberculosis Act.

(3) No person shall prevent the testing of or remove any animal which has been placed in quarantine pursuant to this section from the place of quarantine until such quarantine is released by the State Veterinarian, except authorized movement for slaughter or other movement as authorized by the State Veterinarian. Any person who violates this subsection is guilty of a Class II misdemeanor. Each animal moved, purchased, sold, traded, bartered, granted, loaned, or otherwise transferred in violation of this subsection is a separate violation.

Sec. 9. (1) All premises that are determined by the State Veterinarian to constitute a health hazard to animals because of bovine tuberculosis shall be properly cleaned and disinfected in accordance with the Bovine Tuberculosis Act.

(2) The State Veterinarian may require and supervise the prescribed cleaning and disinfection of affected premises.

Sec. 10. The owner or custodian of an affected herd shall assemble and submit such herd for bovine tuberculosis examination and testing and shall provide reasonable assistance in confining the animals and providing facilities for proper administration of the testing. Any person who interferes or obstructs anyone in such work or attempts to obstruct or prevent by force the carrying on of such examination and testing is guilty of a Class II misdemeanor.

Sec. 11. The department may assess and collect payment for services provided and expenses incurred pursuant to its responsibilities under the Bovine Tuberculosis Act and the rules and regulations adopted and promulgated pursuant thereto. All payments assessed and collected pursuant to this section shall be remitted to the State Treasurer for credit to the Bovine Tuberculosis Cash Fund.

Sec. 12. The Bovine Tuberculosis Cash Fund is created. The fund shall consist of money appropriated by the Legislature and gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The fund shall be used to carry out the Bovine Tuberculosis Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 13. (1) The department may provide state funds to or on behalf of herd owners for certain activities or any portion thereof in connection with the implementation of the Bovine Tuberculosis Act if funds for any activities or any portion have been appropriated. The department may develop

statewide priorities for the expenditure of state funds available for bovine tuberculosis control and eradication program activities.

(2) Part of such state funds may be used by the department to pay a portion of the cost of testing done by or for accredited veterinarians if such work is approved by the department.

(3) In administering the act and program activities pursuant to the act, the department shall not pay for (a) testing done for change of ownership at private treaty or at concentration points, (b) costs of gathering, confining, and restraining animals subjected to testing or costs of providing necessary facilities and assistance, (c) costs of testing to qualify or maintain herd accreditation, or (d) indemnity for any animal destroyed as a result of being affected with bovine tuberculosis.

(4) The department is not liable for actual or incidental costs incurred by any person due to departmental actions in enforcing the Bovine Tuberculosis Act.

Sec. 14. (1) No person other than an accredited veterinarian shall inject or apply tuberculin into or on any animal.

(2) No person, including a veterinarian, shall inject or apply tuberculin into or on any animal for the purpose of plugging, for the purpose of fraudulently concealing the presence of bovine tuberculosis in such animal, or for the purpose of preventing future reactions to tuberculin.

Sec. 15. (1) In order to insure compliance with the Bovine Tuberculosis Act, the department may apply for a temporary 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 Attorney General or the county attorney of the county in which violations of the act are occurring or are about to occur, when notified of such violations or threatened violations by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in the district court without delay. It shall also be the duty of the Attorney General or county attorney of the county in which violation of the act occurred to prosecute violations without delay.

(3) This section does not require the department to report all acts for prosecution if in the opinion of the Director of Agriculture the public interest will best be served through other administrative, criminal, or civil actions.

Sec. 16. (1) Whenever the Director of Agriculture or the State Veterinarian has reason to believe that any person has violated any of the provisions of the Bovine Tuberculosis Act or any rules or regulations adopted and promulgated under the act, an order may be entered requiring such person to appear before the director and show cause why an order should not be entered requiring such person to cease and desist from the violations charged. Such order shall set forth the alleged violations, fix the time and place of the hearing, and provide for notice thereof which shall be given not less than twenty days before the date of such hearing. After a hearing, or if the person charged with such violation fails to appear at the time of such hearing, if the director finds such person to be in violation, the director shall enter an order requiring such person to cease and desist from the specific acts, practices, or omissions.

(2) Any person aggrieved by any order entered by the director or other action of the director under the Bovine Tuberculosis Act may appeal the order or action, and the appeal shall be in accordance with the Administrative Procedure Act.

(3) This section does not prevent the department from first pursuing any other administrative, civil, or criminal actions provided in the Bovine Tuberculosis Act when there is a violation of the act or rules and regulations adopted and promulgated under the act.

Sec. 17. Any person violating the Bovine Tuberculosis Act or any rule or regulation adopted and promulgated under the act for which no penalty is otherwise provided is guilty of a Class II misdemeanor.

Sec. 18. Section 2-3918, Reissue Revised Statutes of Nebraska, is amended to read:

2-3918 All herds shall meet the following herd health requirements:

(1) All animals in the herd shall be maintained in a healthy condition and shall be properly fed and kept;

(2) The herd shall be located in an area a zone within the state

which meets the requirements of a modified accredited area zone that has a modified accredited advanced tuberculosis status or greater, in which ~~not more than one-half~~ less than one one-hundredth of one percent of the cattle total number of herds of cattle and bison in the zone for each of the most recent two years have been found to be infected with tuberculosis as determined by the department pursuant to ~~sections 54-706 to 54-722.~~ the Bovine Tuberculosis Act. If the herd is not located in such ~~an area,~~ a zone, it shall be tested annually under the jurisdiction of the program provided by ~~sections 54-706 to 54-722.~~ the act. All additions to the herd shall be from ~~an area~~ a zone or from herds meeting these same requirements; and

(3) The herd shall be located in an area within the state which complies with the Nebraska Bovine Brucellosis Act and any rules and regulations adopted and promulgated pursuant to such act. If the area in which the herd is located does not meet these requirements, the herd shall be blood-tested annually or milk-ring-tested semiannually. All additions to the herd shall be from an area or from herds meeting these same requirements.

Sec. 19. Original section 2-3918, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 20. The following sections are outright repealed: Sections 54-706, 54-707, 54-708, 54-709, 54-710, 54-711, 54-712, 54-713, 54-714, 54-715, 54-716, 54-717, 54-718, 54-719, 54-720, 54-721, and 54-722, Reissue Revised Statutes of Nebraska.

Sec. 21. Since an emergency exists, this act takes effect when passed and approved according to law.