

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 254

Introduced by Dubas, 34.

Read first time January 14, 2009

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 2-2622,
2 2-2626, and 2-2646, Reissue Revised Statutes of
3 Nebraska; to require Nebraska aerial pesticide business
4 licenses for aerial pesticide application; to harmonize
5 provisions; to provide an operative date; to repeal the
6 original sections; and to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-2622, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-2622 Sections 2-2622 to 2-2654 and sections 2 to 6 of
4 this act shall be known and may be cited as the Pesticide Act.

5 Sec. 2. (1) A person shall not apply pesticides by use
6 of an aircraft or cause or arrange aerial pesticide spraying
7 operations to occur on the property of another unless such
8 person holds a Nebraska aerial pesticide business license for
9 the principal departure location of the aircraft to be used.
10 Any person applying pesticides without a principal departure
11 location licensed in this state and who applies pesticides by
12 use of an aircraft within this state may obtain a Nebraska aerial
13 pesticide business license for the principal out-of-state departure
14 location. An individual licensed as a commercial applicator shall
15 apply pesticides by use of an aircraft only under the direct
16 supervision of a person holding a Nebraska aerial pesticide
17 business license. Such supervising license holder is jointly
18 liable with the commercial applicator for any damages caused
19 by the commercial applicator. An individual who is licensed as
20 a commercial applicator with an aerial pest control category may
21 perform aerial operations without the supervision by a person
22 holding a Nebraska aerial pesticide business license if the
23 commercial aerial applicator acquires a Nebraska aerial pesticide
24 business license. For purposes of sections 2 to 6 of this act,
25 unless utilizing a licensed aerial pesticide business to perform

1 the application of pesticides by use of an aircraft, a person
2 causing or arranging aerial pesticide spraying operations shall
3 include a person performing billing and collection of payment for
4 aerial spraying services performed, employing or contracting with
5 pilots to perform aerial applications, assigning aerial spraying
6 work orders to pilots, or paying compensation to pilots for aerial
7 spraying services performed whether or not such person is licensed
8 as a commercial applicator.

9 (2) Sections 2 to 6 of this act shall not apply to
10 aerial spraying operations conducted by federal, state, or local
11 government with public aircraft.

12 Sec. 3. (1) An application for an initial or renewal
13 Nebraska aerial pesticide business license shall be submitted
14 to the department prior to the commencement of aerial spraying
15 operations, and an application for renewal of a Nebraska aerial
16 pesticide business license shall be submitted to the department
17 by January 1 of each year. If the applicant's principal departure
18 location is located within Nebraska, the application shall be
19 accompanied by an annual license fee of fifty dollars. If the
20 applicant's principal departure location is located outside of
21 Nebraska, the application shall be accompanied by an annual
22 license fee of two hundred fifty dollars plus fifty dollars
23 for each departure location in addition to the principal departure
24 location utilized for aerial spraying operations within Nebraska.
25 The license fee may be increased by the director after a public

1 hearing is held outlining the reason for any proposed change in the
2 fee except that the fee shall not exceed one hundred dollars
3 for applicants having a principal departure location located
4 within Nebraska, five hundred dollars for applicants having a
5 principal departure location located outside of Nebraska, or one
6 hundred dollars for each additional departure location utilized for
7 aerial spraying operations in addition to the principal departure
8 location. The application shall be on a form prescribed by the
9 department and shall include the following:

10 (a) The full name and permanent mailing address of
11 the person applying for such license. If such applicant is an
12 individual, the application shall include the applicant's personal
13 mailing address and social security number. If such applicant is
14 not an individual, the full name of each partner or member or
15 the full name of the principal officers shall be given on the
16 application;

17 (b) The location of the applicant's principal departure
18 location and any additional departure locations utilized for aerial
19 spraying operations to be conducted within Nebraska identified by
20 one of the following: Global Positioning System coordinants, legal
21 description, local address of the site, or airport identifier;

22 (c) A copy of the applicant's agricultural aircraft
23 operations certificate issued pursuant to 14 C.F.R. part 137 or
24 evidence the applicant holds such a certificate issued by the
25 Federal Aviation Administration;

1 (d) The aircraft registration number issued by the
2 Federal Aviation Administration pursuant to 14 C.F.R. part 47
3 of all aircraft owned, rented, or leased by the applicant to be
4 utilized for aerial pesticide applications and all other aircraft
5 utilized in aerial spraying operations conducted by the applicant;

6 (e) The Nebraska commercial applicator certificate number
7 and current Federal Aviation Administration commercial pilot
8 certificate number of all persons operating aircraft for the aerial
9 application of pesticides during any aerial spraying operations
10 conducted by the applicant; and

11 (f) Such other information as deemed necessary by the
12 director to determine the suitability of the applicant for
13 licensure as an aerial pesticide business.

14 (2) An applicant located outside this state shall file
15 with the department a written designation of a resident agent
16 for service of process in actions taken in the administration and
17 enforcement of the Pesticide Act. In lieu of designating a resident
18 agent, the applicant may designate the Secretary of State as the
19 recipient of service of process for the applicant in this state.

20 Sec. 4. Prior to commencing aerial spraying operations, a
21 person holding a Nebraska aerial pesticide business license shall
22 immediately report all aircraft, pilots, and departure locations
23 utilized for the operation if different from or in addition to
24 the information provided in the person's initial or renewal license
25 application. If a pilot or aircraft are to be utilized for seasonal

1 operations or on a temporary basis, the license holder shall
2 notify the director of the approximate dates of commencement and
3 termination of the utilization of supplemental pilots or aircraft.

4 Sec. 5. Each Nebraska aerial pesticide business license
5 holder is responsible for the acts of each person applying
6 pesticides on lands within this state under the direction and
7 supervision of the business. The aerial pesticide business's
8 license is subject to denial, suspension, modification, or
9 revocation after a hearing for any violation of the Pesticide
10 Act, whether committed by the license holder, the license holder's
11 agent, or the license holder's employee.

12 Sec. 6. Each aerial pesticide business shall maintain
13 records of applications of pesticides by use of an aircraft that
14 are required by the department and the department may require
15 such records to be kept separate from other business records. The
16 department may adopt and promulgate rules and regulations regarding
17 the information to be included in the records. The aerial pesticide
18 business shall keep such records for a period of at least three
19 years, provide the department with access to examine such records,
20 and provide the department a copy of any such record upon request.

21 Sec. 7. Section 2-2626, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 2-2626 The department shall have the following powers,
24 functions, and duties:

25 (1) To administer, implement, and enforce the Pesticide

1 Act and serve as the lead state agency for the regulation of
2 pesticides. The department shall involve the natural resources
3 districts and other state agencies, including the Department of
4 Environmental Quality, the Department of Natural Resources, or the
5 Department of Health and Human Services, in matters relating to
6 water quality. Nothing in the act shall be interpreted in any way
7 to affect the powers of any other state agency or of any natural
8 resources district to regulate for ground water quality or surface
9 water quality as otherwise provided by law;

10 (2) To be responsible for the development and
11 implementation of a state management plan and pesticide management
12 plans. The Department of Environmental Quality shall be responsible
13 for the adoption of standards for pesticides in surface water and
14 ground water, and the Department of Health and Human Services
15 shall be responsible for the adoption of standards for pesticides
16 in drinking water. These standards shall be established as action
17 levels in the state management plan and pesticide management plans
18 at which prevention and mitigation measures are implemented. Such
19 action levels may be set at or below the maximum contaminant
20 level set for any product as set by the federal agency under the
21 federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the
22 act existed on January 1, 2006. The Department of Agriculture shall
23 cooperate with and use existing expertise in other state agencies
24 when developing the state management plan and pesticide management
25 plans and shall not hire a hydrologist within the department for

1 such purpose;

2 (3) After notice and public hearing, to adopt
3 and promulgate rules and regulations providing lists of
4 state-limited-use pesticides for the entire state or for a
5 designated area within the state, subject to the following:

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

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

15 (ii) The water quality standards set by the Department
16 of Environmental Quality or the Department of Health and Human
17 Services pursuant to this section are exceeded; or

18 (iii) The Department of Agriculture determines that the
19 pesticide requires additional restrictions to meet the requirements
20 of the Pesticide Act, the federal act, or any plan adopted under
21 the Pesticide Act or the federal act;

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

25 (i) With permission of the department;

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

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

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

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

12 (d) The state management plan and pesticide management
13 plans shall be coordinated with the Department of Agriculture and
14 other state agency plans and with other state agencies and with
15 natural resources districts;

16 (e) The state management plan and pesticide management
17 plans may impose progressively more rigorous pesticide management
18 practices as pesticides are detected in ground water or surface
19 water at increasing fractions of the standards adopted by the
20 Department of Environmental Quality or the Department of Health and
21 Human Services; and

22 (f) A pesticide management plan may impose progressively
23 more rigorous pesticide management practices to address any
24 unreasonable adverse effect of pesticides on humans or the
25 environment. When appropriate, a pesticide management plan may

1 establish action levels for imposition of such progressively more
2 rigorous management practices based upon measurable indicators of
3 the adverse effect on humans or the environment;

4 (4) To adopt and promulgate such rules and regulations
5 as are necessary for the enforcement and administration of the
6 Pesticide Act. The regulations shall include, but not be limited
7 to, regulations providing for:

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

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

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

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

19 (e) Reporting and record-keeping requirements for persons
20 distributing or using pesticide products made available under
21 section 136p of the federal act and for persons required to keep
22 records under the Pesticide Act;

23 (f) Methods to be used in the application of pesticides
24 when the Department of Agriculture finds that such regulations are
25 necessary to carry out the purpose and intent of the Pesticide

1 Act. Such regulations may include methods to be used in the
2 application of a restricted-use pesticide, may relate to the time,
3 place, manner, methods, materials, amounts, and concentrations
4 in connection with the use of the pesticide, may restrict
5 or prohibit use of the pesticides in designated areas during
6 specified periods of time, and may provide specific examples and
7 technical interpretations of subdivision (4) of section 2-2646.
8 The regulations shall encompass all reasonable factors which the
9 department deems necessary to prevent damage or injury by drift or
10 misapplication to (i) plants, including forage plants, or adjacent
11 or nearby property, (ii) wildlife in the adjoining or nearby
12 areas, (iii) fish and other aquatic life in waters in reasonable
13 proximity to the area to be treated, (iv) surface water or ground
14 water, and (v) humans, animals, or beneficial insects. In adopting
15 and promulgating such regulations, the department shall give
16 consideration to pertinent research findings and recommendations
17 of other agencies of the state, the federal government, or other
18 reliable sources. The department may, by regulation, require that
19 notice of a proposed use of a pesticide be given to landowners
20 whose property is adjacent to the property to be treated or in the
21 immediate vicinity thereof if the department finds that such notice
22 is necessary to carry out the purpose of the act;

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

25 (h) Establishment of the amount of any fee or fine as

1 directed by the act;

2 (i) Establishment of the components of any state
3 management plan or pesticide management plan;

4 (j) Establishment of categories for licensed pesticide
5 applicators in addition to those established in 40 C.F.R. 171, as
6 the regulation existed on January 1, 2006; and

7 (k) Establishment of a process for the issuance of
8 permits for emergency-use pesticides made available under section
9 136p of the federal act;

10 (5) To enter any public or private premises at any
11 reasonable time to:

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

15 (b) Inspect or sample any area exposed or reported to be
16 exposed to a pesticide or where a pesticide use has occurred;

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

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

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

24 (f) Inspect, examine, or take samples from any
25 application equipment, building, or place owned, controlled, or

1 operated by a ~~registrant, licensed certified applicator, or dealer~~
2 any person engaging in an activity regulated by the act if,
3 from probable cause, it appears that the application equipment,
4 building, or place contains a pesticide;

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

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

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

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

24 (9) To impose or levy an administrative fine of not
25 more than five thousand dollars on any person who has violated

1 the provisions, requirements, conditions, limitations, or duties
2 imposed by the act or rules and regulations adopted and promulgated
3 pursuant to the act. A violation means any separate activity or day
4 in which an activity takes place;

5 (10) To cause a violation warning letter to be served
6 upon the alleged violator or violators pursuant to the act;

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

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

14 (13) To seize, for use as evidence, without formal
15 warrant if probable cause exists, any pesticide which is in
16 violation of the act or is not approved by the Department of
17 Agriculture or which is found to be used or distributed in the
18 violation of the act or the rules and regulations adopted and
19 promulgated under it;

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

24 (15) To adopt classifications of restricted-use
25 pesticides as determined by the federal agency under the federal

1 act. In addition to the restricted-use pesticides classified by
2 the administrator, the Department of Agriculture may also determine
3 state-limited-use pesticides for the state or for designated areas
4 within the state as provided in subdivision (3) of this section;

5 (16) To receive grants-in-aid from any federal entity,
6 and to enter into cooperative agreements with any federal entity,
7 any agency of this state, any subdivision of this state, any agency
8 of another state, any Indian tribe, or any private person for
9 the purpose of obtaining consistency with or assistance in the
10 implementation of the Pesticide Act. The Department of Agriculture
11 may reimburse any such entity from the Pesticide Administrative
12 Cash Fund for the work performed under the cooperative agreement.
13 The department may delegate its administrative responsibilities
14 under the act to cities of the metropolitan and primary classes
15 if it reasonably believes that such cities can perform the
16 responsibilities in a manner consistent with the act and the
17 rules and regulations adopted and promulgated under it;

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

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

25 (19) To enter into a settlement agreement with any person

1 regarding the disposition of any license, permit, registration, or
2 administrative fine;

3 (20) To issue a cease and desist order pursuant to
4 section 2-2649;

5 (21) To deny an application or cancel, suspend, or modify
6 the registration of a pesticide pursuant to section 2-2632;

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

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

11 Sec. 8. Section 2-2646, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 2-2646 It shall be unlawful for any person:

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

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

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

24 (c) A pesticide that is not in the registrant's or
25 manufacturer's unbroken immediate container and that is not labeled

1 with the information and in the manner required by the act and any
2 regulations adopted under the act;

3 (d) A pesticide that is adulterated;

4 (e) A pesticide or device that is misbranded;

5 (f) A pesticide in a container that is unsafe due to
6 damage;

7 (g) A pesticide which differs from its composition as
8 registered; or

9 (h) A pesticide that has not been colored or discolored
10 as required by the Pesticide Act or the federal act;

11 (2) To detach, alter, deface, or destroy, wholly or in
12 part, any label or labeling provided for by the Pesticide Act or a
13 rule or regulation adopted under the act;

14 (3) To add any substance to or take any substance from a
15 pesticide in a manner that may defeat the purpose of the act or any
16 rule or regulation adopted and promulgated under the act;

17 (4) To use or cause to be used a pesticide contrary
18 to the act, to the labeling of the pesticide, or to a rule or
19 regulation of the department limiting the use of the pesticide,
20 except that it shall not be unlawful to:

21 (a) Use a pesticide at any dosage, concentration, or
22 frequency less than that specified or recommended on the labeling
23 if the labeling does not specifically prohibit deviation from the
24 specified or recommended dosage, concentration, or frequency or, if
25 the pesticide is a termiticide, it is not used at a rate below

1 the minimum concentration specified or recommended on the label for
2 preconstruction treatments;

3 (b) Use a pesticide against any target pest not specified
4 on the labeling if the use is for the crop, animal, or site
5 specified or recommended on the labeling and the labeling does not
6 specifically state that the pesticide may be used only for the
7 pests specified or recommended on the labeling;

8 (c) Employ any method of use not prohibited by the
9 labeling if (i) the labeling does not specifically state that the
10 product may be used only by the methods specified or recommended on
11 the labeling, (ii) the method of use is consistent with the method
12 specified on labeling, and (iii) the method of use does not more
13 than minimally increase the exposure of the pesticide to humans or
14 the environment;

15 (d) Mix a pesticide or pesticides with a fertilizer when
16 such mixture is not prohibited by the labeling if such mixing is
17 consistent with the method of application specified or recommended
18 on the labeling and does not more than minimally increase the
19 exposure of the pesticide to humans or the environment;

20 (e) Use a pesticide in conformance with section 136c,
21 136p, or 136v of the federal act or section 2-2626; or

22 (f) Use a pesticide in a manner that the director
23 determines to be consistent with the purposes of the Pesticide Act;

24 (5) To use a pesticide at any dosage, concentration, or
25 frequency greater than specified or recommended on the labeling

1 unless the labeling allows the greater dosage, concentration, or
2 frequency;

3 (6) To handle, transport, store, display, or distribute a
4 pesticide in a manner that violates any provision of the Pesticide
5 Act or a rule or regulation adopted and promulgated under the act;

6 (7) To use, cause to be used, dispose, discard, or store
7 a pesticide or pesticide container in a manner that the person
8 knows or should know is:

9 (a) Likely to adversely affect or cause injury to
10 humans, the environment, vegetation, crops, livestock, wildlife,
11 or pollinating insects;

12 (b) Likely to pollute a water supply or waterway; or

13 (c) A violation of the Environmental Protection Act or a
14 rule or regulation adopted and promulgated pursuant to the act;

15 (8) To use for the person's advantage or reveal, other
16 than to a properly designated state or federal official or
17 employee, to a physician, or in an emergency to a pharmacist
18 or other qualified person for the preparation of an antidote,
19 any information relating to pesticide formulas, trade secrets, or
20 commercial or financial information acquired under the Pesticide
21 Act and marked as privileged or confidential by the registrant;

22 (9) To commit an act for which a licensed certified
23 applicator's license may be suspended, modified, revoked, or placed
24 on probation under the Pesticide Act;

25 (10) To knowingly or intentionally use, cause to be used,

1 handle, store, or dispose of a pesticide in a manner that causes
2 bodily injury to or the death of a human or that pollutes ground
3 water, surface water, or a water supply;

4 (11) To fail to obtain a license or to pay all fees and
5 penalties as prescribed by the act and the rules and regulations
6 adopted and promulgated pursuant to the act;

7 (12) To fail to keep or refuse to make available for
8 examination and copying by the department all books, papers,
9 records, and other information necessary for the enforcement of the
10 act;

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

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

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

18 (16) To use any pesticide which is under an
19 experimental-use or emergency-use permit which is contrary to the
20 provisions of such permit;

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

22 (18) Except as authorized by law, to knowingly or
23 intentionally use, cause to be used, handle, store, or dispose
24 of a pesticide on property without the permission of the owner or
25 lawful tenant. Applications for outdoor vector control authorized

1 by a federal or state agency or political subdivision shall not be
2 in violation of this subdivision when the application is made from
3 public access property and cannot practically be confined to public
4 property;

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

8 (20) To violate any other provision of the act.

9 Sec. 9. This act becomes operative on May 1, 2009.

10 Sec. 10. Original sections 2-2622, 2-2626, and 2-2646,
11 Reissue Revised Statutes of Nebraska, are repealed.

12 Sec. 11. Since an emergency exists, this act takes effect
13 when passed and approved according to law.