

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 110
FINAL READING

Introduced by Erdman, 47

Read first time January 8, 2007

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend section 2-3918,
2 Reissue Revised Statutes of Nebraska; to adopt the
3 Bovine Tuberculosis Act; to provide penalties; to
4 harmonize provisions; to eliminate provisions relating to
5 tuberculin testing; to repeal the original section; to
6 outright repeal sections 54-706, 54-707, 54-708, 54-709,
7 54-710, 54-711, 54-712, 54-713, 54-714, 54-715, 54-716,
8 54-717, 54-718, 54-719, 54-720, 54-721, and 54-722,
9 Reissue Revised Statutes of Nebraska; and to declare an
10 emergency.
11 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

21 (4) Bovine means cattle and bison;

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

24 (6) Designated accredited veterinarian means an
25 accredited veterinarian trained and approved to conduct specific

1 bovine tuberculosis tests such as the bovine interferon gamma
2 assay, other bovine tuberculosis program activities, or both; and

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

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

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

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

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

10 (3) In administering the act, the department shall have
11 access to all livestock dealer and livestock auction market records
12 to facilitate the traceback of affected, exposed, suspect, or
13 reactor animals to the herd of origin or other point of original
14 infection. Such records shall be maintained for a minimum of five
15 years and shall be made available to the State Veterinarian upon
16 request during normal business hours.

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

24 Sec. 6. Any person who discovers, suspects, or has reason
25 to believe that any animal belonging to him, her, or another

1 person or which he or she has in his or her possession or custody
2 is exhibiting signs consistent with bovine tuberculosis shall
3 immediately report such fact, belief, or suspicion to the State
4 Veterinarian.

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

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

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

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

24 Sec. 8. (1) The State Veterinarian may immediately
25 quarantine any animal and the premises on which such animal is

1 located if bovine tuberculosis is suspected or has been diagnosed
2 in an animal on such premises.

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

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

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

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

21 Sec. 10. The owner or custodian of an affected herd shall
22 assemble and submit such herd for bovine tuberculosis examination
23 and testing and shall provide reasonable assistance in confining
24 the animals and providing facilities for proper administration of
25 the testing. Any person who interferes or obstructs anyone in such

1 work or attempts to obstruct or prevent by force the carrying on of
2 such examination and testing is guilty of a Class II misdemeanor.

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

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

18 Sec. 13. (1) The department may provide state funds
19 to or on behalf of herd owners for certain activities or any
20 portion thereof in connection with the implementation of the Bovine
21 Tuberculosis Act if funds for any activities or any portion
22 have been appropriated. The department may develop statewide
23 priorities for the expenditure of state funds available for bovine
24 tuberculosis control and eradication program activities.

25 (2) Part of such state funds may be used by the

1 department to pay a portion of the cost of testing done by or
2 for accredited veterinarians if such work is approved by the
3 department.

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

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

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

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

23 Sec. 15. (1) In order to insure compliance with the
24 Bovine Tuberculosis Act, the department may apply for a temporary
25 restraining order, a temporary or permanent injunction, or a

1 mandatory injunction against any person violating or threatening
2 to violate the act or the rules and regulations adopted and
3 promulgated under the act. The district court of the county
4 where the violation is occurring or is about to occur shall have
5 jurisdiction to grant such relief upon good cause shown. Relief may
6 be granted notwithstanding the existence of any other remedy at law
7 and shall be granted without bond.

8 (2) It shall be the duty of the Attorney General or the
9 county attorney of the county in which violations of the act are
10 occurring or are about to occur, when notified of such violations
11 or threatened violations by the department, to cause appropriate
12 proceedings under subsection (1) of this section to be instituted
13 and pursued in the district court without delay. It shall also be
14 the duty of the Attorney General or county attorney of the county
15 in which violation of the act occurred to prosecute violations
16 without delay.

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

21 Sec. 16. (1) Whenever the Director of Agriculture or
22 the State Veterinarian has reason to believe that any person has
23 violated any of the provisions of the Bovine Tuberculosis Act or
24 any rules or regulations adopted and promulgated under the act,
25 an order may be entered requiring such person to appear before

1 the director and show cause why an order should not be entered
2 requiring such person to cease and desist from the violations
3 charged. Such order shall set forth the alleged violations, fix
4 the time and place of the hearing, and provide for notice thereof
5 which shall be given not less than twenty days before the date
6 of such hearing. After a hearing, or if the person charged with
7 such violation fails to appear at the time of such hearing, if the
8 director finds such person to be in violation, the director shall
9 enter an order requiring such person to cease and desist from the
10 specific acts, practices, or omissions.

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

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

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

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

1 2-3918 All herds shall meet the following herd health
2 requirements:

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

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

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

25 Sec. 19. Original section 2-3918, Reissue Revised

1 Statutes of Nebraska, is repealed.

2 Sec. 20. The following sections are outright repealed:

3 Sections 54-706, 54-707, 54-708, 54-709, 54-710, 54-711, 54-712,

4 54-713, 54-714, 54-715, 54-716, 54-717, 54-718, 54-719, 54-720,

5 54-721, and 54-722, Reissue Revised Statutes of Nebraska.

6 Sec. 21. Since an emergency exists, this act takes effect

7 when passed and approved according to law.