

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 99

FINAL READING

Introduced by Carlson, 38.

Read first time January 09, 2009

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend section 54-744,
2 Reissue Revised Statutes of Nebraska; to adopt
3 the Anthrax Control Act; to provide penalties; to
4 eliminate anthrax provisions and penalties; to harmonize
5 provisions; to repeal the original section; to outright
6 repeal sections 54-754, 54-755, 54-756, 54-757, 54-758,
7 54-759, 54-760, 54-761, 54-762, and 54-763, Reissue
8 Revised Statutes of Nebraska; and to declare an
9 emergency.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 18 of this act shall be known
2 and may be cited as the Anthrax Control Act.

3 Sec. 2. The purpose of the Anthrax Control Act is to
4 prevent, suppress, and control anthrax to protect the health of
5 livestock within Nebraska.

6 Sec. 3. For purposes of the Anthrax Control Act:

7 (1) Accredited veterinarian means a veterinarian approved
8 by the Administrator of the Animal and Plant Health Inspection
9 Service of the United States Department of Agriculture in
10 accordance with the provisions of 9 C.F.R. part 161, as such
11 regulation existed on January 1, 2009;

12 (2) Affected herd means a herd which contains an animal
13 infected with or exposed to anthrax;

14 (3) Affected premises means the land on which is located
15 an animal infected with or exposed to anthrax and includes the
16 buildings, holding facilities, and equipment located on such land;

17 (4) Animal means all vertebrate members of the animal
18 kingdom except humans, fish, amphibians, reptiles, and wild animals
19 at large;

20 (5) Approved laboratory means a laboratory designated by
21 the department in rules and regulations;

22 (6) Department means the Department of Agriculture;

23 (7) Exposed means an animal or herd having or suspected
24 of having contact (a) with animals infected with anthrax spores
25 or organisms or (b) with premises which contain anthrax spores or

1 organisms;

2 (8) Herd means (a) any group of livestock maintained
3 on common ground for any purpose or (b) two or more groups
4 of livestock under common ownership or supervision geographically
5 separated but which have an interchange of livestock without regard
6 to whether the livestock are infected or exposed;

7 (9) Herd plan means a written disease management plan
8 that is designed by the herd owner or custodian in conjunction with
9 the State Veterinarian to control and eradicate anthrax from an
10 infected herd;

11 (10) Livestock means cattle, bison, swine, sheep, goats,
12 equines, and domesticated cervine animals;

13 (11) Quarantine means the restriction imposed by the
14 department (a) on the movement of an affected herd, (b) on the
15 movement of an animal or a group of animals infected with or
16 exposed to anthrax, (c) on the use of an affected premises, or
17 (d) on the use of land where anthrax spores have been found and
18 includes restriction of the buildings, holding facilities, and
19 equipment upon such land; and

20 (12) State Veterinarian means the veterinarian appointed
21 pursuant to section 81-202.01 or his or her designee.

22 Sec. 4. The Anthrax Control Act shall be administered and
23 enforced by the department. In administering and enforcing the act:

24 (1) The department may cooperate and may contract with
25 any person, including any local, state, or national organizations,

1 public or private, for the performance of activities required or
2 authorized pursuant to the act;

3 (2) The department may employ all general powers provided
4 in sections 54-701 to 54-705 and 54-742 to 54-753 in administering
5 the act;

6 (3) For purposes of access for (a) inspections, (b)
7 tests, including the taking of samples, (c) treatments, or (d)
8 carrying out and enforcing quarantines, agents and employees of the
9 department shall have the right to enter upon any premises where
10 livestock that are infected with or are suspected to be infected
11 with anthrax are located. It shall be unlawful for any person to
12 interfere in any way with or obstruct an agent or employee of the
13 department from entering upon such premises for the purposes stated
14 in this subdivision or to interfere in any way with the department
15 in such work;

16 (4) The department may delegate to appropriate personnel
17 any of the responsibilities in this section for the proper
18 administration of the act;

19 (5) The department may adopt and promulgate rules and
20 regulations to aid in implementing the act. The rules and
21 regulations may include, but are not limited to, establishing
22 procedures for testing, vaccination, quarantine, cleaning and
23 disinfection of affected premises, carcass disposal, designation
24 of approved laboratories to confirm the presence of anthrax,
25 submission of specimen samples, and diagnosis and confirmation of

1 anthrax;

2 (6) The department may provide state funds to or on
3 behalf of herd owners for certain activities or any portion thereof
4 in connection with the implementation of the act if funds for
5 any activities or any portion thereof have been appropriated and
6 are available. The department may develop statewide priorities
7 for the expenditure of state funds available for anthrax control
8 activities; and

9 (7) Unless the Legislature appropriates funds to the
10 department specifically for such purposes, the department shall not
11 pay for (a) costs of gathering, confining, and restraining animals
12 for vaccination or other anthrax control activities, (b) costs of
13 providing necessary facilities and assistance, (c) indemnity for
14 any animal destroyed as a result of being affected with anthrax, or
15 (d) costs for carcass disposal and any disinfection or cleaning.

16 Sec. 5. Any person who discovers, suspects, or has reason
17 to believe that an animal belonging to him, her, or another person
18 or which he or she has in his or her possession or custody is
19 exhibiting signs consistent with anthrax shall immediately report
20 such fact, belief, or suspicion to the State Veterinarian.

21 Sec. 6. It shall be unlawful for any person to knowingly
22 harbor, sell, or otherwise dispose of any animal, or carcass part
23 thereof, that has been or is exposed to or infected with anthrax,
24 except as otherwise provided in the Anthrax Control Act and any
25 rules and regulations adopted and promulgated thereunder.

1 Sec. 7. The State Veterinarian shall immediately
2 quarantine, at the expense of the owner or custodian, any affected
3 herd and the affected premises. An animal or animals under
4 quarantine may be relocated as directed by the State Veterinarian
5 to avoid or lessen exposure to pathogenic agents. Quarantine
6 restrictions imposed by the State Veterinarian as applied to the
7 movement and disposition of an individual animal or a group of
8 animals within an affected herd may vary as appropriate according
9 to risk of exposure to pathogenic agents. It shall be unlawful
10 for any person to remove an animal which has been placed under
11 quarantine pursuant to the Anthrax Control Act from the place
12 of quarantine until such quarantine is released by the State
13 Veterinarian. An affected premises or any portion thereof which has
14 been placed under quarantine shall remain under quarantine until
15 released by the State Veterinarian.

16 Sec. 8. The herd owner or custodian, in cooperation with
17 the department, shall develop a herd plan which may include (a)
18 the vaccination, treatment, and testing of an infected herd, (b)
19 cleaning and disinfection of premises of an infected herd, and (c)
20 carcass disposal. A herd owner or custodian of an infected herd who
21 fails to develop a herd plan or who fails to follow the herd plan
22 is guilty of a Class I misdemeanor.

23 Sec. 9. It is unlawful for any person to prevent the
24 testing, vaccination, and treatment of an affected herd. The owner
25 or custodian of a herd ordered to be tested, vaccinated, or

1 treated shall confine such herd in a suitable place determined
2 by the department and shall furnish the necessary assistance and
3 facilities for restraining the livestock as requested by the State
4 veterinarian.

5 Sec. 10. The sale and use of anthrax vaccine shall be in
6 accordance with the following procedures:

7 (1) The department may restrict the sale and use of
8 anthrax vaccine;

9 (2) Only anthrax vaccines which are licensed and approved
10 by the United States Department of Agriculture, Animal and Plant
11 Health Inspection Service, Veterinary Services shall be used
12 for the vaccination of livestock, and such vaccines shall be
13 distributed by an accredited veterinarian licensed to practice in
14 Nebraska;

15 (3) Records of all anthrax vaccine sales and purchases
16 shall be retained by the prescribing or administering veterinarian
17 for a period of five years. Such records shall be available for
18 examination by the Department of Agriculture or its authorized
19 representative during normal business hours. If requested by the
20 department, a report of sales and purchases of anthrax vaccine
21 shall be submitted to the department;

22 (4) An exposed herd may be vaccinated as deemed
23 appropriate by the State Veterinarian;

24 (5) Infected herds shall be vaccinated, and such vaccine
25 shall only be administered by an accredited veterinarian licensed

1 to practice in Nebraska or by a designee of the department; and
2 (6) Herd owners or custodians of nonaffected herds may
3 purchase anthrax vaccine from an accredited veterinarian.

4 Sec. 11. For an affected herd that has experienced
5 any death loss, the owner or custodian of the herd shall be
6 responsible to have samples submitted to an approved laboratory for
7 confirmation of anthrax.

8 Sec. 12. If an animal has, or is suspected to have, died
9 of anthrax, it is unlawful to:

10 (1) Transport such animal or animal carcass, except as
11 directed and approved by the department;
12 (2) Use the flesh or organs of such animal or animal
13 carcass for food for livestock or human consumption; or
14 (3) Remove the skin or hide of such animal or animal
15 carcass.

16 Sec. 13. (1) The disposition of any infected animal
17 carcass shall be carried out under the direction of the department.
18 It shall be the duty of the owner or custodian of an animal that
19 has died of anthrax to bury or burn the carcass on the premises
20 where the carcass is found, unless directed otherwise by the
21 department. If such carcass is buried, no portion of the carcass
22 shall be interred closer than six feet from the surface of the
23 ground.

24 (2) The department may direct the owner or custodian of
25 an infected herd to treat the herd and to clean and disinfect the

1 premises in accordance with the herd plan.

2 Sec. 14. A confirmation of anthrax shall only be made by
3 an approved laboratory.

4 Sec. 15. (1) The owner or custodian of an affected herd
5 or affected premises shall be responsible to pay for costs related
6 to: (a) The quarantine, testing, or vaccination of an affected
7 herd; (b) the disinfection or cleaning of the premises of an
8 affected herd; and (c) any other costs associated with the control
9 of anthrax in such herd.

10 (2) The department may assess and collect payment
11 for services provided and expenses incurred pursuant to its
12 responsibilities under the Anthrax Control Act.

13 (3) Any person failing to carry out the responsibilities
14 set out in the act and any rules and regulations adopted and
15 promulgated thereunder shall be guilty of a Class I misdemeanor.
16 Whenever any person fails to carry out such responsibilities under
17 the act, the department may perform such functions. Upon completion
18 of any required anthrax control activities, the department shall
19 determine its actual costs incurred in handling the affected herd
20 and affected premises and conducting the testing and notify the
21 herd owner or custodian in writing. The herd owner or custodian
22 shall reimburse the department its actual costs within fifteen days
23 following the date of the notice. Any person failing to reimburse
24 the department shall be assessed a late fee of up to twenty-five
25 percent of the amount due for each thirty days of nonpayment to

1 reimburse the department for its costs of collecting the amount
2 due.

3 (4) Any costs and fees assessed and collected pursuant to
4 this section shall be remitted to the State Treasurer for credit to
5 the Anthrax Control Act Cash Fund.

6 (5) The Anthrax Control Act Cash Fund is created. The
7 fund shall consist of money appropriated by the Legislature and
8 gifts, grants, costs, or charges from any source, including
9 federal, state, public, and private sources. The fund shall be
10 used to carry out the Anthrax Control Act. Any money in the fund
11 available for investment shall be invested by the state investment
12 officer pursuant to the Nebraska Capital Expansion Act and the
13 Nebraska State Funds Investment Act.

14 Sec. 16. (1) To obtain compliance with the Anthrax
15 Control Act, the department may apply for a temporary restraining
16 order, a temporary or permanent injunction, or a mandatory
17 injunction against any person violating or threatening to violate
18 the act or any rules or regulations adopted and promulgated
19 thereunder. The district court of the county where the violation
20 is occurring or is about to occur has jurisdiction to grant such
21 relief upon good cause shown. Relief may be granted notwithstanding
22 the existence of any other remedy at law and shall be granted
23 without bond.

24 (2) The Attorney General or the county attorney of the
25 county where violations of the act or any rules or regulations

1 adopted and promulgated thereunder are occurring or about to occur
2 shall, when notified of such violation or threatened violation,
3 cause appropriate proceedings under subsection (1) of this section
4 to be instituted and pursued without delay and shall prosecute
5 violations under sections 8, 15, and 18 of this act without delay.

6 Sec. 17. The department is not liable for actual or
7 incidental costs incurred by any person due to departmental actions
8 in enforcing the Anthrax Control Act unless such costs are clearly
9 unreasonable or result from the gross or willful negligence of the
10 department or its employees or agents.

11 Sec. 18. Any person violating the Anthrax Control Act
12 or any rules or regulations adopted and promulgated thereunder for
13 which no penalty is otherwise provided is guilty of a Class I
14 misdemeanor.

15 Sec. 19. Section 54-744, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 54-744 (1) Except as set out in subsections (2) and (3)
18 of this section and section 13 of this act, it is the duty of the
19 owner or custodian of any dead animal to cause such animal, within
20 thirty-six hours after receiving knowledge of the death of such
21 animal, to be buried at least four feet below the surface of the
22 ground or to be completely burned on the premises where such animal
23 dies unless the animal is disposed of to a duly licensed rendering
24 establishment in this state. Such animal shall not be moved or
25 transported from the premises where such animal has died except by

1 the authorized agents and employees of the rendering establishment
2 to which such carcass is disposed.

3 (2) Livestock carcasses up to six hundred pounds may
4 be incorporated into a composting facility on the premises where
5 the livestock died and shall remain in such compost facility
6 until completely composted before spreading on land. Any person
7 incorporating livestock carcasses into a composting facility shall
8 follow the operating procedures as set forth in the Journal of
9 the American Veterinary Medical Association, Volume 210, No. 8. Not
10 less than one copy of such journal, or portion thereof, shall be
11 filed for use and examination by the public in the offices of the
12 Clerk of the Legislature and the Secretary of State. The Department
13 of Agriculture shall regulate the composting of livestock carcasses
14 and shall adopt and promulgate rules and regulations governing the
15 same, which rules and regulations may incorporate or may modify the
16 operating procedures set forth in this subsection.

17 (3) An animal carcass or carcass part may be transported
18 by the owner or the owner's agent to a veterinary clinic
19 or veterinary diagnostic laboratory for purposes of performing
20 diagnostic procedures.

21 (4) Carcasses disposed of in compliance with this section
22 or section 54-744.01 are exempt from the requirements for disposal
23 of solid waste under the Integrated Solid Waste Management Act.

24 Sec. 20. Original section 54-744, Reissue Revised
25 Statutes of Nebraska, is repealed.

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1 Sec. 21. The following sections are outright repealed:
2 Sections 54-754, 54-755, 54-756, 54-757, 54-758, 54-759, 54-760,
3 54-761, 54-762, and 54-763, Reissue Revised Statutes of Nebraska.
4 Sec. 22. Since an emergency exists, this act takes effect
5 when passed and approved according to law.