

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 68

Final Reading

Introduced by Schilz, 47.

Read first time January 10, 2013

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 2-1072, 2-1074,
 2 2-1083, 2-1091, 2-1091.01, 2-1095, 2-10,102, 2-10,103,
 3 2-10,103.01, 2-10,103.02, 2-10,103.04, 2-10,104,
 4 2-10,105, 2-10,106, 2-10,111, and 2-10,115, Reissue
 5 Revised Statutes of Nebraska; to change and eliminate
 6 provisions of the Plant Protection and Plant Pest Act; to
 7 harmonize provisions; to repeal the original sections;
 8 and to outright repeal sections 2-1075.01, 2-1077,
 9 2-1080, 2-1092, 2-1093, 2-1094, 2-1096, 2-1097, 2-1098,
 10 2-1099, 2-10,100, 2-10,100.01, 2-10,100.02, 2-10,101, and
 11 2-10,116.01, Reissue Revised Statutes of Nebraska.

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

1 Section 1. Section 2-1072, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-1072 Sections 2-1072 to 2-10,117 and sections 3, 4, 5,
4 7, and 11 of this act shall be known and may be cited as the Plant
5 Protection and Plant Pest Act.

6 Sec. 2. Section 2-1074, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 2-1074 For purposes of the Plant Protection and Plant
9 Pest Act, unless the context otherwise requires, the definitions
10 found in sections 2-1074.01 to 2-1089 and sections 3, 4, 5, and 7 of
11 this act shall be used.

12 Sec. 3. Certification inspection of Nebraska-grown
13 nursery stock shall mean an inspection performed pursuant to section
14 2-1095.

15 Sec. 4. Grow shall mean to produce a plant or plant
16 product, by propagation or cultivation, including, but not limited
17 to, division, transplant, seed, or cutting, generally over a period
18 of one year or greater. Grow does not include transferring nursery
19 stock from one container to another or potting bare-root nursery
20 stock, if the stock will be distributed within twelve months.

21 Sec. 5. Harmonization plan shall mean any agreement
22 between states, or a state or states and the federal government,
23 designed to limit the spread of a plant pest into or out of a
24 designated area.

25 Sec. 6. Section 2-1083, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 2-1083 Nursery stock shall mean ~~all field grown or~~
3 ~~container grown perennial plants, including, but not limited to,~~
4 ~~vegetative or propagative parts or perennial plants dug from the~~
5 ~~wild, so labeled, and distributed, and excluding, among other things,~~
6 ~~greenhouse plants grown for indoor use, annual plants, biennial~~
7 ~~plants, florist stock, cut flowers, sod, turf, onions, or potatoes,~~
8 ~~or seeds of any such plant. all botanically classified hardy~~
9 ~~perennial or biennial plants, trees, shrubs, and vines, either~~
10 ~~domesticated or wild, cuttings, grafts, scions, buds, bulbs,~~
11 ~~rhizomes, or roots thereof, and such plants and plant parts for, or~~
12 ~~capable of, propagation, excluding plants grown for indoor use,~~
13 ~~annual plants, florist stock, cut flowers, sod, turf, onions,~~
14 ~~potatoes, or seeds of any such plant.~~

15 Sec. 7. Nursery stock distributor shall mean any person
16 involved in:

17 (1) The acquisition and further distribution of nursery
18 stock;

19 (2) The utilization of nursery stock for landscaping or
20 purchase of nursery stock for other persons;

21 (3) The distribution of nursery stock with a mechanical
22 digger, commonly known as a tree spade, or by other means;

23 (4) The solicitation of or taking orders for sales of
24 nursery stock in the state; or

25 (5) The growing and distribution of nursery stock or

1 active involvement in the management or supervision of a nursery.

2 Sec. 8. Section 2-1091, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 2-1091 For the purpose of enforcement of the Plant
5 Protection and Plant Pest Act or any rule or regulation, the
6 department may:

7 (1) Enter ~~and inspect~~ at reasonable times and in a
8 reasonable manner without being subject to any action for trespass or
9 damages, if reasonable care is exercised, all property where plants
10 are grown, packed, held prior to distribution, or distributed ~~and to~~
11 inspect all plants, structures, vehicles, equipment, packing
12 materials, containers, records, and labels on such property. The
13 department may inspect and examine all records and property relating
14 to compliance with the act. Such records and property shall be made
15 available to the department for review at all reasonable times;

16 (2) In a reasonable manner, hold for inspection and take
17 samples of any plants and associated materials which may not be in
18 compliance with the act;

19 (3) Inspect or reinspect at any time or place any plants
20 that are in the state or being shipped into or through the state and
21 treat, seize, destroy, require treatment or destruction of, or return
22 to the state of origin any plants in order to inhibit or prevent the
23 movement of plant pests throughout the state;

24 (4) Obtain an inspection warrant in the manner prescribed
25 in sections 29-830 to 29-835 from a court of record if any person

1 refuses to allow the department to inspect pursuant to this section;

2 (5) Issue a written or printed withdrawal-from-
3 distribution order and post signs to delineate sections not marked
4 pursuant to ~~subdivision (6)~~ subsection (3) of section ~~2-1092~~ 2-1095
5 or sections of distribution locations and to notify persons of any
6 withdrawal-from-distribution order when the department has reasonable
7 cause to believe any lot of nursery stock is being distributed in
8 violation of the act or any rule or regulation;

9 (6) Apply for a restraining order, a temporary or
10 permanent injunction, or a mandatory injunction against any person
11 violating or threatening to violate the act or the rules and
12 regulations. The district court of the county where the violation is
13 occurring or is about to occur shall have jurisdiction to grant such
14 relief upon good cause shown. Relief may be granted notwithstanding
15 the existence of any other remedy at law and shall be granted without
16 bond;

17 (7) Issue a quarantine or establish a quarantine area;

18 (8) Cooperate and enter into agreements, including
19 harmonization plans, with any person in order to carry out the
20 purpose of the act;

21 (9) Establish a restricted plant pest list to prohibit
22 the movement into the state of plant pests not known to occur in
23 Nebraska and to prohibit the movement of those plant pests present in
24 the state but known to be destructive to the plant industry;

25 (10) Issue European corn borer quarantine certificates,

1 phytosanitary certificates, and export certificates on plants for
2 individual shipment to other states or foreign countries if those
3 plants comply with the requirements or regulations of such state or
4 foreign country or issue quarantine compliance agreements or European
5 corn borer quarantine certification licenses;

6 (11) Inspect plants that any person desires to ship into
7 another state or country when such person has made an application to
8 the department for such inspection. The inspection shall determine
9 the presence of plant pests to determine the acceptance of the plants
10 into other states or countries. The department may accept the
11 inspections of laboratories authorized by the department or field
12 inspectors of the department;

13 (12) Certify plants or property to meet the requirements
14 of specific quarantines imposed on Nebraska or Nebraska plants. The
15 quarantine certification requirements shall be set forth in the rules
16 and regulations;

17 (13) ~~Assess~~ Until increased or decreased by rules or
18 regulations, assess and collect charges—fees set forth in section 11
19 of this act for inspections, services, or work performed in carrying
20 out subdivisions (8) and (10) through (12) of this section. Such
21 charges shall not exceed the actual cost of accomplishing such work.
22 Inspection time shall include the driving to and from the location of
23 the inspection in addition to the time spent conducting the
24 inspection, and the mileage charge shall be for the purpose of
25 inspection. Any fee charged to the department relating to such

1 subdivisions shall be paid by the person requesting the inspection,
2 services, or work. The department may, for purposes of administering
3 ~~subdivisions (10) through (12) of this section such subdivisions,~~
4 establish in rules and regulations ~~such items as charges, inspection~~
5 requirements, standards, and issuance, renewal, or revocation of
6 licenses, certificates, or permits ~~agreements~~ necessitated by such
7 subdivisions;

8 (14) Conduct continuing survey and detection programs on
9 plant pests to monitor the population or spread of plant pests;

10 (15) Issue, place on probation, suspend, or revoke
11 licenses ~~required by~~ issued or agreements entered into pursuant to
12 the act or deny applications for such licenses or agreements pursuant
13 to the act; and

14 (16) Issue orders imposing administrative fines or cease
15 and desist orders pursuant to the act.

16 Sec. 9. Section 2-1091.01, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 2-1091.01 (1) A person shall not operate as a ~~grower, a~~
19 ~~dealer, or a collector~~ nursery stock distributor without a valid
20 license issued by the department. ~~A person licensed as a grower shall~~
21 ~~not be required to obtain a separate dealer's license.~~ Any person
22 validly licensed as a grower, a dealer, or a broker under the Plant
23 Protection and Plant Pest Act as it existed on the day before the
24 effective date of this act shall remain validly licensed until
25 December 31, 2013.

1 ~~On or after December 31, 1993, a person shall not operate~~
2 ~~as a broker without a valid license issued by the department.~~

3 (2) ~~Application~~ Each nursery stock distributor shall
4 apply for a license required by subsection (1) of this section shall
5 ~~be made to the director~~ on forms furnished by the department due on
6 January 1 for the current license year. Such application shall
7 include the full name and mailing address of the applicant, the names
8 and addresses of any partners, limited liability company members, or
9 corporate officers, the name and address of the person authorized by
10 the applicant to receive notices and orders of the department as
11 provided in the Plant Protection and Plant Pest Act, whether the
12 applicant is an individual, partnership, limited liability company,
13 corporation, or other legal entity, the location of the operation,
14 and the signature of the applicant. A person distributing greenhouse
15 plants grown for indoor use, annual plants, ~~biennial plants,~~ florist
16 stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any
17 such plant, shall not be required to obtain a license but may do so
18 pursuant to section 2-10,105.

19 (3) A nursery stock distributor license shall expire on
20 December 31 of each year unless previously lapsed or revoked.

21 (4) All applications shall be accompanied by a license
22 fee for the first acre on which nursery stock is located. If the
23 nursery stock distributor does not have physical possession of
24 nursery stock, the nursery stock distributor shall pay a license fee
25 based on one acre. Additionally the applicant shall pay an acreage

1 fee for each additional acre on which nursery stock is located. The
2 license fees are set forth in section 11 of this act. If the
3 applicant has distributed nursery stock prior to applying for a
4 license, the applicant shall pay an additional administrative fee as
5 set forth in section 11 of this act.

6 (5) All nursery stock distributed by a nursery stock
7 distributor shall be only sound, healthy nursery stock that is
8 reasonably capable of growth, labeled correctly, free from injurious
9 plant pests, and stored or displayed under conditions which maintain
10 its vigor as provided in the rules and regulations. Any fee charged
11 to the department for diagnostic services or shipping costs shall be
12 paid by the nursery stock distributor.

13 (6) A valid copy of the nursery stock distributor's
14 license shall be posted in a conspicuous place at the distribution
15 location.

16 (7) A nursery stock distributor shall obtain a license
17 for each distribution location.

18 ~~(3)~~ (8) Each applicant for a nursery stock distributor
19 license shall furnish a signed written statement that such person
20 will acquire and distribute only nursery stock which has been
21 distributed by a person who is duly licensed pursuant to the act or
22 approved by an authorizing agency within the state of origin
23 recognized by the department.

24 ~~(4)~~ (9) Every licensee—nursery stock distributor shall
25 continually maintain a complete and accurate list with the department

1 of all sources from which nursery stock is ~~obtained.~~ received.

2 ~~(5)-(10)~~ Each licensee-nursery stock distributor shall
3 keep and make available for examination by the department for a
4 period of three years an accurate record of all transactions
5 conducted in the ordinary course of business. Records pertaining to
6 such business shall at a minimum include the names of the persons
7 from which nursery stock was received, the receiving date, the amount
8 received, and the variety and place of origin of the nursery stock
9 received and all documents accompanying each shipment indicating
10 compliance with state or federal requirements and quarantines. A
11 ~~broker's records shall also include the names of the persons to which~~
12 ~~nursery stock was delivered, the delivery date, the amount delivered,~~
13 ~~and the variety and place of origin of the nursery stock delivered.~~

14 ~~(6)-(11)~~ A nursery stock distributor license shall lapse
15 automatically upon a change of ownership, and the subsequent owner
16 must obtain a new license. The nursery stock distributor license of a
17 ~~grower, dealer, or collector shall lapse automatically upon a change~~
18 of location, and such licensee must obtain a new license. A licensee
19 shall notify the department in writing at least thirty days prior to
20 any change in ownership, name, or address. A licensee-nursery stock
21 distributor shall notify the department in writing before there is a
22 change of the name or address of the person authorized to receive
23 notices and orders of the department. When a licensee-nursery stock
24 distributor permanently ceases operating, he or she shall return the
25 license to the department.

1 Sec. 10. Section 2-1095, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-1095 (1) All nursery stock distributors that distribute
4 any nursery stock that they grow shall apply for an additional
5 inspection for the certification of the Nebraska-grown nursery stock
6 as provided in this section. The nursery stock distributor shall
7 apply for such certification inspection of the Nebraska-grown nursery
8 stock as part of the application for the nursery stock distributor
9 license described in section 2-1091.01.

10 (2)(a) Applications for certification inspection of
11 Nebraska-grown nursery stock that are due on January 1 pursuant to
12 section 2-1091.01 and are not received prior to February 1 and
13 initial applications not received prior to beginning of distribution
14 shall be considered delinquent. Such applications shall have an
15 inspection fee as set forth in section 11 of this act.

16 (b) Inspection time shall include the driving time to and
17 from the location of the inspection in addition to the time spent
18 conducting the inspection, and the mileage charge shall be for the
19 purpose of inspection.

20 (3) Each nursery stock distributor shall post signs
21 delineating sections of all growing areas. A section shall be not
22 larger than five acres.

23 (4) All growing areas within the state shall be inspected
24 by the department at least once per year for certification and
25 compliance with the Plant Protection and Plant Pest Act.

1 ~~(1)~~—(5) Following the certification inspection of
2 Nebraska-grown nursery stock, the department shall provide a copy of
3 the plant inspection report to the ~~grower~~—nursery stock distributor
4 specifying any area of the nursery from which nursery stock cannot be
5 distributed or any plants which may not be distributed as nursery
6 stock. When deemed necessary to maintain compliance with the purposes
7 of the Plant Protection and Plant Pest Act, the department shall
8 require the ~~grower~~—nursery stock distributor to withdraw from
9 distribution any variety or amount of nursery stock. A reinspection
10 may be conducted by the department at the ~~grower's~~—nursery stock
11 distributor's request and cost. The department may also reinspect to
12 determine compliance with the act. To determine the cost of any
13 reinspection, the department shall use ~~rates~~—fees as outlined in
14 ~~subdivision (4) of section 2-1092.~~ subsection (2) of this section.
15 The ~~grower~~—nursery stock distributor shall comply with the
16 recommendations of the department as to the treatment or destruction
17 of nursery stock.

18 ~~(2)~~—(6) The department may require the treatment or
19 destruction of any nursery stock that is infested or infected with
20 plant pests, nonviable, damaged, or desiccated to the point of not
21 being reasonably capable of growth.

22 ~~(3)~~—(7) Any nursery stock on which a withdrawal-from-
23 distribution order has been issued shall be released for distribution
24 only by authorized department employees or after written permission
25 has been obtained from the department. Each ~~grower~~—nursery stock

1 distributor shall promptly report to the department, in writing, the
2 amount and type of plants treated or destroyed under requirements on
3 withdrawal-from-distribution orders. The department may withhold a
4 ~~grower's license~~ or certification of Nebraska-grown nursery stock
5 until conditions have been met by the ~~grower~~ nursery stock
6 distributor as specified in the plant inspection report or any other
7 order issued by the department. A ~~grower's license~~ certification of
8 Nebraska-grown stock may be issued covering portions of the nursery
9 which are not infested or infected if the ~~grower~~ nursery stock
10 distributor agrees to treat, destroy, or remove as specified by the
11 department those plants found to be infested or infected.

12 Sec. 11. (1) License fees for the Plant Protection and
13 Plant Pest Act due on January 1, 2014, shall be the amount in column
14 A of subsection (3) of this section.

15 (2) The license fees due January 1, 2015, and each
16 January 1 thereafter shall be set by the director on or before July 1
17 of each year. The director may raise or lower such fees each year to
18 meet the criteria in this subsection, but the fee shall not be
19 greater than the amount in column B of subsection (3) of this
20 section. The same percentage shall be applied to each category for
21 all fee increases or decreases. The director shall use the fees in
22 column A of subsection (3) of this section as a base for future fee
23 increases or decreases. The director shall determine the fees based
24 on estimated annual revenue and fiscal year-end cash fund balances as
25 follows:

1 (a) The estimated annual revenue shall not be greater
 2 than one hundred seven percent of program cash fund appropriations
 3 allocated for the Plant Protection and Plant Pest Act; and

4 (b) The estimated fiscal year-end cash fund balance shall
 5 not be greater than seventeen percent of program cash fund
 6 appropriations allocated for the act.

7 (3) License Fees.

<u>License Fees</u>	<u>A</u>	<u>B</u>
<p>9 <u>Nursery stock</u></p> <p>10 <u>distributor license</u></p> <p>11 <u>as set forth in</u></p> <p>12 <u>section 2-1091.01</u></p> <p>13 <u>for the first acre</u></p>	<p>\$115</p>	<p>\$140</p>
<p>14 <u>Fee for additional acres</u></p>	<p><u>\$5.00 per acre</u></p>	<p><u>\$6.00 per acre</u></p>
<p>15 <u>Distributing without</u></p> <p>16 <u>obtaining a nursery</u></p> <p>17 <u>stock distributor</u></p> <p>18 <u>license fee</u></p>	<p><u>25% of the fee</u></p> <p><u>per month up to</u></p> <p><u>100% of the</u></p> <p><u>license fee</u></p>	

19 (4) Other fees for the Plant Protection and Plant Pest
 20 Act under subsection (5) of this section in effect on January 1,
 21 2014, shall be the amount in column A of such subsection. The
 22 department may increase or decrease such fees by rules or regulations
 23 adopted and promulgated by the department. Such increases shall not

1 result in fees greater than the amount in column B of subsection (5)
 2 of this section.

3 (5) Other Fees.

<u>Other Fees</u>	<u>A</u>	<u>B</u>
<u>Certification fee for nursery stock growing acres as set forth in section 2-1095</u>	<u>Included in license fee</u>	
<u>Late applications for certification of nursery stock growing acres</u>	<u>\$24 per hour \$0.42 per mile</u>	<u>\$27 per hour \$0.50 per mile</u>
<u>Reinspections or requested inspections for nursery stock</u>	<u>\$24 per hour \$0.42 per mile</u>	<u>\$27 per hour \$0.50 per mile</u>
<u>Phytosanitary or export certificates set forth in section 2-1091</u>	<u>\$30 per certificate and \$7 for taking an application by telephone</u>	<u>\$40 per certificate and \$10 for taking an application by telephone</u>
<u>Phytosanitary or export certificate inspections and</u>	<u>\$24 per hour</u>	<u>\$27 per hour</u>

1	<u>reinspections</u>	<u>\$0.42 per mile</u>	<u>\$0.50 per mile</u>
2	<u>European corn borer</u>		
3	<u>quarantine certification</u>		
4	<u>license set forth in</u>	<u>\$50 per license,</u>	<u>\$65 per license,</u>
5	<u>section 2-1091</u>	<u>annually</u>	<u>annually</u>
6	<u>European corn borer</u>	<u>\$6.25 for</u>	<u>\$10.00 for</u>
7	<u>certificate</u>	<u>packet of 25</u>	<u>packet of 25</u>
8	<u>Quarantine compliance</u>		
9	<u>agreements as set</u>	<u>\$50 per agreement</u>	<u>\$65 per agreement</u>
10	<u>forth in section 2-1091</u>	<u>annually</u>	<u>annually</u>
11	<u>Quarantine compliance</u>		
12	<u>agreement inspections</u>	<u>\$24 per hour</u>	<u>\$27 per hour</u>
13	<u>and reinspections</u>	<u>\$0.42 per mile</u>	<u>\$0.50 per mile</u>

14 (6) Any fee remaining unpaid for more than one month
15 shall be considered delinquent and the person owing the fee shall pay
16 an additional administrative fee of twenty-five percent of the
17 delinquent amount for each month it remains unpaid, not to exceed one
18 hundred percent of the original amount due. The department may waive
19 the additional administrative fee based upon the existence and extent
20 of any mitigating circumstances that have resulted in the late
21 payment of such fee. The purpose of the additional administrative fee
22 is to cover the administrative costs associated with collecting fees,
23 and all money collected as an additional administrative fee shall be

1 remitted to the State Treasurer for credit to the Plant Protection
2 and Plant Pest Cash Fund.

3 Sec. 12. Section 2-10,102, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 2-10,102 Collectors shall be required to obtain a
6 ~~grower's nursery stock distributor's license~~ and shall be ~~subject to~~
7 ~~all the requirements that apply to the inspection of nursery stock.~~
8 required to apply for an additional inspection for the certification
9 of the collected nursery stock as provided in section 2-1095. All
10 collected nursery stock shall be labeled as such.

11 Sec. 13. Section 2-10,103, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 2-10,103 A ~~licensee~~ nursery stock distributor shall:

14 (1) Comply with the Plant Protection and Plant Pest Act
15 and the rules and regulations:

16 (a) In the care of nursery stock;

17 (b) In the distribution of nursery stock including
18 nursery stock that has been withdrawn from distribution;

19 (c) Regarding treatment or destruction of nursery stock
20 as required by a withdrawal-from-distribution order;

21 (d) In maintaining the nursery stock in a manner
22 accessible to the department; and

23 (e) In the payment of license fees;

24 (2) Comply with any order of the director issued pursuant
25 to the act;

1 (3) Not distribute nursery stock obtained from an
2 unlicensed ~~grower or dealer;~~ nursery stock distributor;

3 (4) Not allow the license to be used by any person other
4 than the person to whom it was issued; and

5 (5) Not interfere with the department in the performance
6 of its duties.

7 Sec. 14. Section 2-10,103.01, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 2-10,103.01 (1) A ~~licensee~~-nursery stock distributor may
10 be placed on probation requiring such person to comply with the
11 conditions set out in an order of probation issued by the director or
12 be ordered to cease and desist from failing to comply or be ordered
13 to pay an administrative fine pursuant to section 2-10,103.02 after:

14 (a) The director determines the ~~licensee~~-nursery stock
15 distributor has not complied with section 2-10,103;

16 (b) The ~~licensee~~-nursery stock distributor is given
17 written notice to comply and written notice of the right to a hearing
18 to show cause why the specified order should not be issued; and

19 (c) The director finds that issuing the specified order
20 is appropriate based on the hearing record or the available
21 information if the hearing is waived by the ~~licensee~~-nursery stock
22 distributor.

23 (2) A ~~licensee~~-nursery stock distributor may be suspended
24 after:

25 (a) The director determines the ~~licensee~~-nursery stock

1 distributor has not complied with section 2-10,103;

2 (b) The ~~licensee~~nursery stock distributor is given
3 written notice to comply and written notice of the right to a hearing
4 to show cause why the license should not be suspended; and

5 (c) The director finds that issuing an order suspending
6 the license is appropriate based on the hearing record or the
7 available information if the hearing is waived by the ~~licensee~~.
8 nursery stock distributor.

9 (3) A license may be immediately suspended and the
10 director may order the ~~licensee's~~nursery stock distributor's
11 operation to cease prior to hearing when:

12 (a) The director determines an immediate danger to the
13 public health, safety, or welfare exists; ~~in the licensee's~~
14 ~~operation~~; and

15 (b) The ~~licensee~~nursery stock distributor receives
16 written notice to comply and written notice of the right to a hearing
17 to show cause why the suspension should not be sustained. Within
18 fifteen days after the suspension, the ~~licensee~~nursery stock
19 distributor may request in writing a date for a hearing and the
20 director shall consider the interests of the ~~licensee~~nursery stock
21 distributor when the director establishes the date and time of the
22 hearing, except that no hearing shall be held sooner than is
23 reasonable under the circumstances. When a ~~licensee~~nursery stock
24 distributor does not request a hearing date within such fifteen-day
25 period, the director shall establish a hearing date and notify the

1 ~~licensee-nursery stock distributor~~ of the date and time of such
2 hearing.

3 (4) A license may be revoked after:

4 (a) The director determines the ~~licensee-nursery stock~~
5 ~~distributor~~ has committed serious, repeated, or multiple violations
6 of any of the requirements of section 2-10,103;

7 (b) The ~~licensee-nursery stock distributor~~ is given
8 written notice to comply and written notice of the right to a hearing
9 to show cause why the license should not be revoked; and

10 (c) The director finds that issuing an order revoking the
11 license is appropriate based on the hearing record or on the
12 available information if the hearing is waived by the ~~licensee-~~
13 ~~nursery stock distributor~~.

14 (5) Any ~~licensee-nursery stock distributor~~ whose license
15 has been suspended shall cease operations until the license is
16 reinstated. Any ~~licensee-nursery stock distributor~~ whose license is
17 revoked shall cease operating until a new license is issued.

18 (6) The director may terminate a proceeding to suspend or
19 revoke a license or subject a ~~licensee-nursery stock distributor~~ to
20 an order of the director described in subsection (1) of this section
21 at any time if the reasons for such proceeding no longer exist. A
22 license which has been suspended may be reinstated, a person with a
23 revoked license may be issued a new license, or a ~~licensee-nursery~~
24 ~~stock distributor~~ may no longer be subject to the director's order if
25 the director determines that the conditions which prompted the

1 suspension, revocation, or order of the director no longer exist.

2 (7) Proceedings to suspend or revoke a license or subject
3 a ~~licensee-nursery stock distributor~~ to an order of the director
4 described in subsection (1) of this section shall not preclude the
5 department from pursuing other civil or criminal actions.

6 Sec. 15. Section 2-10,103.02, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 2-10,103.02 (1) ~~Pursuant to section 2-10,103.01, the~~ The
9 director may issue an order imposing an administrative fine on a
10 ~~licensee-any person who has violated any provision, requirement,~~
11 condition, limitation, or duty imposed by the Plant Protection and
12 Plant Pest Act or rules and regulations adopted and promulgated
13 pursuant to the act in an amount which shall not exceed ~~five hundred~~
14 ~~dollars.~~ one thousand dollars for each violation. A violation means
15 each action which violates any separate or distinct provision,
16 requirement, condition, limitation, or duty imposed by the act or
17 such rules and regulations. In determining whether to impose an
18 administrative fine and, if a fine is imposed, the amount of the
19 fine, the director shall take into consideration (a) the seriousness
20 of the violation, (b) the extent to which the ~~licensee-person~~ derived
21 financial gain as a result of his or her failure to comply, (c) the
22 extent of intent, willfulness, or negligence by the ~~licensee-person~~
23 in the violation, (d) the likelihood of the violation reoccurring,
24 (e) the history of the ~~licensee's-person's~~ failure to comply, (f) the
25 ~~licensee's-person's~~ attempts to prevent or limit his or her failure

1 to comply, (g) the ~~licensee's~~ person's willingness to correct
2 violations, (h) the nature of the ~~licensee's~~ person's disclosure of
3 violations, (i) the ~~licensee's~~ person's cooperation with
4 investigations of his or her failure to comply, and (j) any factors
5 which may be established by the rules and regulations.

6 (2) ~~All money collected by the department as an~~
7 ~~administrative fine shall be remitted on a monthly basis to the State~~
8 ~~Treasurer for credit to the permanent school fund. The department~~
9 shall remit administrative fines collected under the act to the State
10 Treasurer on a monthly basis for distribution in accordance with
11 Article VII, section 5, of the Constitution of Nebraska.

12 (3) Any administrative fine imposed under the Plant
13 Protection and Plant Pest Act and unpaid shall constitute a debt to
14 the State of Nebraska which may be collected by lien foreclosure or
15 sued for and recovered in any proper form of action in the name of
16 the State of Nebraska in the district court of the county in which
17 the violator resides or owns property. The lien shall attach to the
18 real estate of the violator when notice of such lien is filed and
19 indexed against the real estate in the office of the register of
20 deeds or county clerk in the county where the real estate is located.

21 Sec. 16. Section 2-10,103.04, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 2-10,103.04 (1) Any notice or order provided for in the
24 Plant Protection and Plant Pest Act shall be personally served on the
25 licensee person holding the nursery stock distributor license, the

1 person named in the notice, or on—the person authorized by the
2 licensee—person holding the nursery stock distributor license to
3 receive notices and orders of the department or shall be sent by
4 certified mail, return receipt requested, to the last-known address
5 of the licensee—person holding the nursery stock distributor license,
6 the person named in the notice, or the person authorized to receive
7 such notices and orders. A copy of the notice and the order shall be
8 filed in the records of the department.

9 (2) Any notice to comply provided for in the act shall
10 set forth the acts or omissions with which the licensee—person
11 holding the nursery stock distributor license or the person named in
12 the notice is charged.

13 (3) A notice of the licensee's—right of the person
14 holding the nursery stock distributor license or the person named in
15 the notice to a hearing provided for in the act shall set forth the
16 time and place of the hearing except as otherwise provided in
17 subsection (3) of section 2-10,103.01. A notice of the licensee's
18 right of the person holding the nursery stock distributor license or
19 the person named in the notice to such hearing shall include notice
20 that the licensee's—right of the person holding the nursery stock
21 distributor license or the person named in the notice to a hearing
22 may be waived pursuant to subsection (5) of this section. ~~A notice of~~
23 ~~the licensee's right to a hearing to show cause why the license~~
24 ~~should not be revoked shall include notice to the licensee that the~~
25 ~~license may be revoked or suspended, that the licensee may be subject~~

1 ~~to an order of the director described in subsection (1) of section~~
2 ~~2-10,103.01, or that the license may be suspended and the licensee~~
3 ~~subject to such an order if the director determines such action is~~
4 ~~more appropriate. A notice of the licensee's right to a hearing to~~
5 ~~show cause why the license should not be suspended shall include~~
6 ~~notice to the licensee that the license may be suspended or that the~~
7 ~~licensee may be subject to an order of the director described in~~
8 ~~subsection (1) of section 2-10,103.01 if the director determines such~~
9 ~~action is more appropriate. A notice of such right to a hearing shall~~
10 ~~include notice of the potential actions that may be taken against the~~
11 ~~person holding the nursery stock distributor license or the person~~
12 ~~named in the notice.~~

13 (4) The hearings provided for in the act shall be
14 conducted by the director at a time and place he or she designates.
15 The director shall make a final finding based upon the complete
16 hearing record and issue an order. If the director has suspended a
17 license pursuant to subsection (3) of section 2-10,103.01, the
18 director shall sustain, modify, or rescind the order. All hearings
19 shall be in accordance with the Administrative Procedure Act.

20 (5) ~~A licensee~~ The person holding the nursery stock
21 distributor license or the person named in the notice shall be deemed
22 to waive the right to a hearing if such licensee person does not come
23 to the hearing at the time and place set forth in the notice
24 described in subsection (3) of this section without requesting the
25 director at least two days before the designated time to change the

1 time and place for the hearing, except that before an order of the
2 director becomes final, the director may designate a different time
3 and place for the hearing if the ~~licensee-person~~ shows the director
4 that the ~~licensee-person~~ had a justifiable reason for not coming to
5 the hearing and not timely requesting a change in the time and place
6 for such hearing. If the licensee-person holding the nursery stock
7 distributor license or the person named in the notice waives the
8 right to a hearing, the director shall make a final finding based
9 upon the available information and issue an order. If the director
10 has suspended a license pursuant to subsection (3) of section
11 2-10,103.01, the director shall sustain, modify, or rescind the
12 order.

13 (6) Any person aggrieved by the finding of the director
14 shall have ten days from the entry of the director's order to request
15 a new hearing if such person can show that a mistake of fact has been
16 made which affected the director's determination. Any order of the
17 director shall become final upon the expiration of ten days after its
18 entry if no request for a new hearing is made.

19 Sec. 17. Section 2-10,104, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 2-10,104 (1) Any person residing outside the state and
22 desiring to solicit orders or distribute nursery stock in Nebraska
23 may do so if:

24 (a) Such person is duly licensed under the nursery laws
25 of the state where the nursery stock originates and the laws of that

1 state are essentially equivalent to the laws of Nebraska as
2 determined by the department; and

3 (b) Such person complies with the Plant Protection and
4 Plant Pest Act and the rules and regulations on all nursery stock
5 distributed in Nebraska.

6 (2) The department may cooperate with and enter into
7 reciprocal agreements with other states regarding licensing and
8 movement of nursery stock. Reciprocal agreements with other states
9 shall not prevent the department from prohibiting the distribution in
10 Nebraska of nursery stock which fails to meet the minimum criteria
11 for nursery stock of Nebraska-licensed ~~growers, dealers, or both.~~
12 nursery stock distributors.

13 Sec. 18. Section 2-10,105, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 2-10,105 (1) Optional inspections of plants may be
16 conducted by the department upon request by any persons desiring such
17 inspection. A fee as set forth in ~~subdivision (4)~~ subsection (2) of
18 section ~~2-1092~~ 2-1095 shall be charged for such an inspection.

19 (2) Any person who desires a ~~grower's~~ nursery stock
20 distributor's license for any greenhouse plants grown for indoor use,
21 annual plants, ~~biennial plants,~~ florist stock, cut flowers, sod,
22 turf, onions, or potatoes, or seeds of any such plant, may apply for
23 such license to the department. The inspection of such plants shall
24 conform to the same requirements that apply to the inspection of
25 nursery stock as set forth in ~~sections 2-1091.01 to 2-1096.~~ section

1 2-1095. For persons who grow or distribute both nursery stock and
2 greenhouse plants grown for indoor use, annual plants, ~~biennial~~
3 ~~plants,~~ florist stock, cut flowers, sod, turf, onions, or potatoes,
4 or seeds of any such plant, one license shall be issued if the annual
5 inspection of such plants is conducted concurrently with the nursery
6 stock inspection and the other requirements of the Plant Protection
7 and Plant Pest Act are met. If a reinspection trip is required, the
8 applicant shall be assessed a reinspection fee as outlined in
9 ~~subdivision (4) of section 2-1092.~~ subsection (2) of section 2-1095.

10 Sec. 19. Section 2-10,106, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 2-10,106 (1) It shall be unlawful for any person,
13 including any carrier transporting nursery stock, to bring into or
14 cause to be brought into Nebraska any nursery stock unless such
15 shipment is plainly and legibly marked with a label showing the name
16 and address of the consignor and consignee, the nature and quantity
17 of the contents, the place of origin, and the license or its
18 equivalent issued by the recognized authorizing agency stating that
19 the nursery from which the nursery stock originates has been
20 inspected.

21 (2) It shall be unlawful for any person to distribute in
22 Nebraska nursery stock for the purpose of resale in Nebraska without
23 meeting the labeling criteria stated in this section.

24 (3) The requirements of this section shall not apply to
25 nursery stock distributed to the final consumer at a distribution

1 location where a valid ~~grower's or dealer's~~ nursery stock
2 distributor's license has been conspicuously posted.

3 (4) The department may cause to be held for inspection
4 any plants, regardless of proper labeling according to the Plant
5 Protection and Plant Pest Act, if there is reason to believe they are
6 infested or infected with plant pests. Such plants shall be held only
7 for a period of time reasonable for proper inspection and any
8 treatment deemed necessary by the department. The department shall
9 not be held responsible for costs incurred by treatment or delay.

10 (5) In carrying out this section, the department may
11 intercept or detain any person or property including vehicles or
12 vessels reasonably believed to be carrying any plants or any other
13 articles capable of carrying plant pests. The department may hold for
14 treatment, destroy, or otherwise dispose of any plants, if found
15 infested or infected with plant pests, at the owner's cost.

16 Sec. 20. Section 2-10,111, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 2-10,111 ~~All costs associated with a withdrawal from~~
19 ~~distribution order or the quarantine, treatment, or destruction of~~
20 ~~plants shall be incurred by the owner of such plants. The department~~
21 ~~shall not be liable for any actual or incidental costs incurred by~~
22 ~~any person due to such departmental actions. The department shall be~~
23 ~~reimbursed by the owner of such plants for the actual expenses~~
24 ~~incurred by it in carrying out a withdrawal from distribution order~~
25 ~~or the quarantine, treatment, or destruction of any plants.~~

1 (1) All costs associated with treating, seizing, or
2 destroying any plant or issuing and enforcing any withdrawal-from-
3 distribution order for any plant, which plant is in violation of the
4 Plant Protection and Plant Pest Act or the rules and regulations
5 adopted and promulgated pursuant to the act, shall be the
6 responsibility of the person in possession of the plant. The
7 department shall be reimbursed by the person in possession of the
8 plant for the actual cost incurred by the department in enforcing the
9 act or such rules and regulations.

10 (2) All costs related to enforcement of the act and such
11 rules and regulations shall be the responsibility of the person
12 violating the act. The department shall be reimbursed by persons
13 violating the act or such rules and regulations for the actual cost
14 incurred by the department in enforcing the act.

15 (3) The department shall not be liable for any costs
16 incurred by any person due to any departmental actions relating to
17 the enforcement of the act or such rules and regulations.

18 Sec. 21. Section 2-10,115, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 2-10,115 (1) Any person shall be guilty of a Class IV
21 misdemeanor for the first violation and a Class II misdemeanor for
22 any subsequent violation of the same nature and in violation of the
23 Plant Protection and Plant Pest Act if that person:

24 (a) ~~Distributes nursery stock and has not been duly~~
25 ~~licensed without a nursery stock distributor license issued under the~~

1 Plant Protection and Plant Pest Act;

2 (b) Receives nursery stock for further distribution from
3 any person who has not been duly licensed or approved under the act;

4 (c) Uses any license issued by the department after it
5 has been revoked or has expired, while the licensee was under
6 suspension, or for purposes other than those authorized by the act;

7 (d) Offers any hindrance or resistance to the department
8 in the carrying out of the act, including, but not limited to,
9 denying or concealing information or denying access to any property
10 relevant to the proper enforcement of the act;

11 (e) Allows any plant declared a nuisance plant as
12 outlined in section 2-10,107 to exist on such person's property or
13 distributes any such plants or materials capable of harboring plant
14 pests;

15 (f) Acts as a ~~grower, dealer, or broker~~ nursery stock
16 distributor and:

17 (i) Fails to comply with provisions for treatment or
18 destruction of nursery stock as required by withdrawal-from-
19 distribution orders;

20 (ii) Distributes any quarantined nursery stock or nursery
21 stock for which a withdrawal-from-distribution order has been issued;

22 (iii) Distributes nursery stock for the purpose of
23 further distribution to any person in Nebraska not licensed as a
24 ~~grower or dealer;~~ nursery stock distributor; or

25 (iv) Fails to pay all fees required by the act and the

1 rules and regulations;

2 (g) Distributes nursery stock which is not sound,
3 healthy, reasonably capable of growth, labeled correctly, and free
4 from injurious plant pests;

5 (h) Distributes plants which have been quarantined or are
6 in a quarantined area;

7 (i) Violates any item set forth as unlawful in section
8 2-10,106;

9 (j) Distributes biological control agents or genetically
10 engineered plant organisms without a permit if a permit is required
11 by the act;

12 (k) Fails to keep and make available for examination by
13 the department all books, papers, and other information necessary for
14 the enforcement of the act;

15 (l) Violates any order of the director after such order
16 has become final or upon termination of any review proceeding when
17 the order has been sustained by a court of law; or

18 (m) Violates any other provision of the Plant Protection
19 and Plant Pest Act.

20 (2) Any lot or shipment of plants not in compliance with
21 the Plant Protection and Plant Pest Act, the rules and regulations,
22 or both shall be subject to seizure on complaint of the department to
23 a court of competent jurisdiction in the county in which such plants
24 are located. If the court finds the plants to be in violation of the
25 act, the rules and regulations, or both and orders the condemnation

1 of the plants, such plants shall be disposed of in any manner deemed
2 necessary by the department. In no instance shall the disposition of
3 the plants be ordered by the court without first giving the claimant
4 an opportunity to apply to the court for release of such plants or
5 for permission to treat or relabel the plants to bring such plants
6 into compliance with the act, the rules and regulations, or both.

7 (3) It shall be the duty of the Attorney General or the
8 county attorney of the county in which any violation occurs or is
9 about to occur, when notified by the department of a violation or
10 threatened violation, to pursue appropriate proceedings without delay
11 pursuant to this section, subdivision (6) of section 2-1091, or
12 subsection (3) of section 2-10,103.02 or any combination thereof.

13 (4) Any person adversely affected by an order made by the
14 department pursuant to the Plant Protection and Plant Pest Act may
15 appeal such order, and the appeal shall be in accordance with the
16 Administrative Procedure Act.

17 Sec. 22. Original sections 2-1072, 2-1074, 2-1083,
18 2-1091, 2-1091.01, 2-1095, 2-10,102, 2-10,103, 2-10,103.01,
19 2-10,103.02, 2-10,103.04, 2-10,104, 2-10,105, 2-10,106, 2-10,111, and
20 2-10,115, Reissue Revised Statutes of Nebraska, are repealed.

21 Sec. 23. The following sections are outright repealed:
22 Sections 2-1075.01, 2-1077, 2-1080, 2-1092, 2-1093, 2-1094, 2-1096,
23 2-1097, 2-1098, 2-1099, 2-10,100, 2-10,100.01, 2-10,100.02, 2-10,101,
24 and 2-10,116.01, Reissue Revised Statutes of Nebraska.