

## LEGISLATIVE BILL 909

Approved by the Governor April 07, 2016

Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to the Department of Agriculture; to amend sections 2-1807, 2-1808, 54-635, 54-850, 54-856, 54-1371, 54-1382, 54-1704, 54-1904, 54-2306, 54-2320, 81-2,147.10, 89-187, 89-187.02, 89-188, 89-197, and 89-1,100, Reissue Revised Statutes of Nebraska; to eliminate provisions relating to penalties; to provide for administrative fees; to state intent; to provide for remittance of certain fees; to eliminate requirements for social security numbers on applications as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 2-1807, Reissue Revised Statutes of Nebraska, is amended to read:

2-1807 (1) Beginning July 1, 1997, every potato shipper shall render and have on file with the Department of Agriculture by the last day of July an annual statement under oath, on forms prescribed by the department, which shall set forth the number of pounds of potatoes grown in Nebraska which were sold or shipped by him or her during the preceding fiscal year beginning on July 1 and ending on June 30. For every potato shipper who was required to file an annual statement for calendar year 1996, a short period statement covering January 1, 1997, through June 30, 1997, shall be filed and the excise taxes paid by July 31, 1997, as required by this section. For every potato shipper who was required to file a quarterly statement for the period of January 1, 1997, through March 31, 1997, a final quarterly statement covering April 1, 1997, through June 30, 1997, shall be filed and the excise taxes paid by July 31, 1997, as required by this section. At the time the sworn statement is filed and in connection therewith, each such potato shipper shall pay and remit to the department an excise tax of not to exceed two cents per one hundred pounds upon the potatoes shown in such statement to have been sold, which tax is hereby levied and imposed. The tax shall be set in the manner prescribed in subsection (3) of this section. The department shall transmit to the State Treasurer all money, checks, drafts, or other mediums of exchange thus received. The department shall have authority to adjust all errors in making payment. Any such potato shipper who shall neglect or refuse to file such statement, or to pay the tax herein imposed, within the time prescribed, shall be guilty of a Class IV misdemeanor. No potatoes shall be subject to tax more than once under the Nebraska Potato Development Act.

(2) All excise taxes imposed by this section are delinquent on August 1 of the year due. The department shall impose an additional administrative fee a penalty of five percent per month of the excise taxes for each month or portion thereof such taxes are delinquent not to exceed one hundred percent of such taxes. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting the excise taxes. All money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Nebraska Potato Development Fund.

(3) The department shall, upon the recommendation of the committee, have the power to set the excise tax prescribed in subsection (1) of this section. The tax shall be one cent per one hundred pounds from July 19, 1980, until adjusted by the department. Adjusted rates shall be effective for periods of not less than one year. The applicable rate of the excise tax shall be prescribed in rules and regulations adopted by the department in the manner prescribed by law.

Sec. 2. Section 2-1808, Reissue Revised Statutes of Nebraska, is amended to read:

2-1808 The State Treasurer is hereby directed to establish and set up in the treasury of the State of Nebraska a fund to be known as the Nebraska Potato Development Fund, to which fund shall be credited, for the uses and purposes of the Nebraska Potato Development Act and its enforcement, all taxes, ~~penalties~~ and fees collected by the Department of Agriculture. After appropriation, the Director of Administrative Services, upon receipt of proper vouchers approved by the director of the department, shall issue his or her warrants on such funds and the State Treasurer shall pay the same out of the money credited to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 3. Section 54-635, Reissue Revised Statutes of Nebraska, is amended to read:

54-635 The Commercial Dog and Cat Operator Inspection Program Cash Fund is created and shall consist of money appropriated by the Legislature, gifts, grants, costs, fees, or charges from any source, including federal, state, public, and private sources. The money shall be used to carry out the Commercial Dog and Cat Operator Inspection Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 4. Section 54-850, Reissue Revised Statutes of Nebraska, is amended to read:

54-850 (1) No person shall manufacture or distribute commercial feed in this state unless such person holds a valid license for each manufacturing and distribution facility in this state. Any out-of-state manufacturer or distributor who has no distribution facility within this state shall obtain a license for his or her principal out-of-state office if he or she markets or distributes commercial feed in the State of Nebraska.

(2) Application for a license shall be made to the department on forms prescribed and furnished by the department. The application shall be accompanied by an annual license fee of fifteen dollars. ~~If the applicant is an individual, the application shall include the applicant's social security number.~~ Licenses shall be renewed on or before January 1 of each year.

(3) A copy of the valid license shall be posted in a conspicuous place in each manufacturing or distribution facility.

(4) This section shall not apply to any person who distributes less than a five-ton volume of commercial feed annually.

(5) The director may refuse to issue a license for any commercial feed facility not in compliance with the Commercial Feed Act and may cancel any license subsequently found not in compliance with such act. No license shall be refused or canceled unless the applicant has been given an opportunity to be heard before the director.

Sec. 5. Section 54-856, Reissue Revised Statutes of Nebraska, is amended to read:

54-856 (1) There shall be paid to the director an inspection fee of ten cents per ton on all commercial feed distributed in the State of Nebraska during the six-month period following January 1, 1987. After the first six months of operation, the fee may be raised or lowered by the director after a public hearing is held outlining the reason for any proposed change in the rate. The maximum rate fixed by the director shall not exceed fifteen cents per ton. The inspection fee shall be paid on commercial feed distributed by the person whose name appears on the label as the manufacturer, guarantor, or distributor, except that a person other than the manufacturer, guarantor, or distributor may assume liability for the inspection fee, subject to the following:

(a) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor;

(b) No fee shall be paid on customer-formula feed if the inspection fee is paid on the commercial feed which is used as ingredients therein;

(c) No fee shall be paid on commercial feed used as ingredients for the manufacture of other commercial feed. If the fee has already been paid, credit shall be given for such payment;

(d) In the case of a commercial feed which is distributed in the state only in packages of ten pounds or less, an annual fee fixed by the director, not to exceed twenty-five dollars, shall be paid in lieu of the inspection fee. The annual fee shall be paid not later than the last day of January each year; and

(e) The minimum inspection fee shall be five dollars for any six-month reporting period.

(2) If the director determines that it is necessary to adjust the rate of the inspection fee being paid to the department, all persons holding a valid license issued pursuant to section 54-850 shall be so notified and shall be given an opportunity to offer comment at a public hearing which shall be required prior to any inspection fee rate change.

(3) Each person who is liable for the payment of such fee shall:

(a) File, not later than January 31 and July 31 of each year, a semiannual statement setting forth the number of tons of commercial feed distributed in this state during the preceding six-month period, which statement shall cover the periods from July 1 to December 31 and January 1 to June 30, and upon filing such statement, pay the inspection fee at the rate specified by this section. Any person who holds a valid license issued pursuant to section 54-850 and whose name appears on the label as the manufacturer, guarantor, or distributor shall file such statement regardless of whether any inspection fee is due. Inspection fees which are due and owing and have not been remitted to the director within fifteen days following the date due shall have an administrative fee ~~a penalty~~ of twenty-five percent of the fees due added to the amount due when payment is made, and an additional administrative fee ~~penalty~~ of twenty-five percent of the fees due shall be added if such inspection and administrative fees are not paid within thirty days of the due date. The purpose of the additional administrative fees is to cover the administrative costs associated with collecting fees. All money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Commercial Feed Administration Cash Fund. The assessment of this administrative penalty fee shall not prevent the director from taking other actions as provided in the Commercial Feed Act; and

(b) Keep such records as may be necessary or required by the director to indicate accurately the tonnage of commercial feed distributed in this state. The director shall have the right to examine such records to verify statements of tonnage. Failure to make an accurate statement, to pay the inspection fee, or to comply as provided in this section shall constitute sufficient cause for the cancellation of all licenses on file.

Sec. 6. Section 54-1371, Reissue Revised Statutes of Nebraska, is amended to read:

54-1371 (1) Whenever brucellosis testing is performed under section 54-1369 with respect to a sale at private treaty or under section 54-1370, the owner of the animals shall be responsible for gathering, confining, and restraining the animals to be tested and shall provide the necessary facilities and assistance. With respect to tests conducted at markets, concentration points, or slaughter establishments, the responsibility shall be borne by the owner of the establishment.

(2) Any person failing to carry out the responsibilities set out under subsection (1) of this section shall be guilty of a Class IV misdemeanor.

(3) Whenever any person fails to carry out the responsibilities set out under subsection (1) of this section, the department shall perform such functions. Upon completion of the testing, the department shall determine its actual costs incurred in handling the livestock and conducting the testing and notify the responsible person in writing. The responsible person shall reimburse the department its actual costs within fifteen days following the date of the notice. Any person failing to reimburse the department as required shall be assessed an administrative fee a penalty of up to twenty-five percent of the amount due for each thirty days of delinquency. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting the actual costs incurred and any administrative fees.

(4) All money received by the department under subsection (3) of this section shall be remitted to the State Treasurer for credit to the Brucellosis Control Cash Fund, which fund is hereby created. Expenditures from the fund may be made to conduct brucellosis testing under the Nebraska Bovine Brucellosis Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 7. Section 54-1382, Reissue Revised Statutes of Nebraska, is amended to read:

54-1382 The department shall adopt and promulgate rules and regulations to aid in implementing the Nebraska Bovine Brucellosis Act. The rules and regulations may include, but need not be limited to, provisions governing:

(1) The conduct of the market livestock testing program, including provisions governing when, where, how, and by whom testing is to be done; what animals are to be tested; and how test results are to be recorded and reported;

(2) The conduct of the brucellosis eradication program, including when, where, how, by whom, and how often testing is to be done; what animals are to be tested; and how test results are to be recorded and reported. The rules and regulations may also include provisions designed to maintain or enhance the federal designation of brucellosis areas within the state and provisions for certifying herds for brucellosis status;

(3) The issuance and release of brucellosis quarantines and the requirements regarding the handling, movement, and disposition of livestock under quarantine;

(4) The testing of livestock to detect brucellosis, including which tests are to be deemed official, by whom the tests are to be administered, how the tests are to be conducted, the reaction tolerances to be recognized, and the classification of results as to negative, suspect, or reactor animals. The rules and regulations shall be consistent with the best available scientific information relative to the control and eradication of brucellosis;

(5) The assessment of administrative fees penalties under subsection (3) of section 54-1371;

(6) The branding and disposition of reactors, including the brand to be used and how it is to be placed, and when and how branding and shipment to slaughter are to be performed;

(7) The branding and handling of exposed animals, including the brand to be used and how it is to be placed, and when and how branding and movement are to be performed;

(8) The cleaning and disinfecting of premises, including the materials to be used, the procedures to be used, and when such procedures are to be performed;

(9) The official brucellosis vaccination program, including the vaccines allowed to be used, the permitted concentrations, the age of the animals to be vaccinated, the effect of vaccination on the interpretation of test results, and the sale and use of vaccine;

(10) The identification of animals subject to the act, including exposed and infected animals, vaccinated animals, and animals tested and to be tested;

(11) The issuance of permits under section 54-1378;

(12) Compliance with the provisions of the Uniform Methods and Rules for Brucellosis Eradication;

(13) The payment for activities and services conducted under the act;

(14) The preparation, maintenance, handling, and filing of records and reports by persons subject to the act, regarding activities performed in accordance with the act, including the vaccination, testing, branding, or movement of animals that may have been infected with or exposed to brucellosis; and

(15) Any other areas deemed necessary by the department to effectively control and eradicate brucellosis.

Sec. 8. Section 54-1704, Reissue Revised Statutes of Nebraska, is amended to read:

54-1704 No person as defined in the Nebraska Livestock Dealer Licensing Act sections ~~54-1701 to 54-1711~~ as a livestock dealer shall:

(1) Engage in the business of buying, selling, or otherwise dealing in

livestock in this state without a valid and effective license issued by the Director of Agriculture under the provisions of this section. All applications for a livestock dealer license or renewal of such license shall be made on forms prescribed for that purpose by the State Veterinarian. ~~If the applicant is an individual, the application shall include the applicant's social security number.~~ The department may by rule and regulation prescribe additional information to be contained in such application. The application shall be filed annually with the department on or before October 1 of each year with the applicable fee of fifty dollars. The license fees collected as provided by the Nebraska Livestock Dealer Licensing Act sections 54-1701 to 54-1711 shall be deposited in the state treasury, and by the State Treasurer placed in the Livestock Auction Market Fund. All money so collected shall be appropriated to the uses of the Department of Agriculture for the purpose of administering the provisions of the Nebraska Livestock Dealer Licensing Act sections 54-1701 to 54-1711;

(2)(a) Engage in the business of buying, selling, or otherwise dealing in livestock in this state without filing with the department, in connection with his or her application for a license, a fully executed duplicate of a valid and effective bond: (i) If he or she is registered and bonded under the provisions of the federal Packers and Stockyards Act of 1921, (7 U.S.C. 181 et seq., ) he or she shall file a statement in the form prescribed by the department evidencing that he or she is maintaining a valid and effective bond or its equivalent under such act; or (ii) if he or she is not registered and bonded under the provisions of the federal Packers and Stockyards Act, he or she shall furnish in connection with his or her application for a license a fully executed duplicate of a valid and effective bond in the amount of five thousand dollars or such larger amount as may be specified by regulations promulgated by the department. (b) The bond shall contain the following conditions: (i) That the principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by such principal for his or her own account or for the accounts of others and such principal shall safely keep and properly disburse all funds, if any, which come into his or her hands for the purpose of paying for livestock purchased for the accounts of others; (ii) that any person damaged by failure of the principal to comply with the condition clause of the bond may maintain suit to recover on the bond; and (iii) that at least thirty days' notice in writing shall be given to the department by the party terminating the bond; or

(3) Continue in the business of a dealer after his or her license or bond has expired, or has been suspended or revoked.

Sec. 9. Section 54-1904, Reissue Revised Statutes of Nebraska, is amended to read:

54-1904 It shall be unlawful for any person to operate or maintain any establishment unless first licensed by the department. A license may be obtained by application to the director upon forms prescribed by him or her for that purpose. ~~If the applicant is an individual, the application shall include the applicant's social security number.~~ The license shall authorize and restrict the licensee to the operation or operations requested in his or her application and approved by the director.

Application for a livestock establishment or a poultry establishment license shall be accompanied by a fee of fifty dollars for each establishment. A license application for a rendering establishment or for a pet feed establishment shall be accompanied by a fee of three hundred dollars for each establishment. Such fee shall be deposited in the state treasury and deposited in the Livestock Auction Market Fund.

No license shall be issued until an inspection of the facilities described in the license application is completed showing the proposed facilities to be in conformity with the Nebraska Meat and Poultry Inspection Law and the rules and regulations adopted and promulgated thereunder by the director.

Licenses shall be renewable annually on or before their expiration. No license shall be transferable with respect to licensee or location. The renewal fee shall be the same as the application fee for each license.

Each license shall by order be summarily suspended whenever an inspection reveals that conditions in any establishment constitute a menace to the public health and shall remain suspended until such conditions are corrected, subject to review by the department and courts as is provided for in the Nebraska Meat and Poultry Inspection Law.

In addition, the director may, upon ten days' notice in writing, suspend or revoke any license issued hereunder or refuse to renew the same for violation of any of the provisions of the Nebraska Meat and Poultry Inspection Law or any rule or regulation duly adopted and promulgated by the director. The notice shall specify in writing the charges relied on, and the hearings, disposition, and court review shall be as prescribed by the Nebraska Meat and Poultry Inspection Law.

Sec. 10. Section 54-2306, Reissue Revised Statutes of Nebraska, is amended to read:

54-2306 (1) On and after August 1, 1999, any person required to obtain a permit under section 54-2305 shall file an application with the department in the manner established by the department. Such application shall include:

- (a) The name, residence, and place of business of the applicant;
- (b) The exact description of the land upon which the domesticated cervine animal facility is to be located and the nature of the applicant's title to the land, whether in fee or under lease; and
- (c) The kind and number of domesticated cervine animals authorized to be

kept or reared in such facility.

(2) The department may by rule and regulation prescribe additional information to be contained in such application. The application shall be filed annually with the department on or before October 1 of each year. The annual fee for a domesticated cervine animal facility permit shall not be less than ten dollars nor more than two hundred dollars, as established by the department. Permittees not filing by October 1 shall be considered delinquent. The department may assess an administrative fee ~~impose a penalty~~ for delinquency, not to exceed one hundred dollars per month or a portion of a month, in addition to the permit fees. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees. Such permits shall expire on December 31 of the year of issuance.

Sec. 11. Section 54-2320, Reissue Revised Statutes of Nebraska, is amended to read:

54-2320 The department may assess and collect costs and fees for services provided, fees assessed, and expenses incurred pursuant to its responsibilities under the Domesticated Cervine Animal Act. All costs and fees assessed and collected pursuant to the act shall be remitted to the State Treasurer for credit to the Domesticated Cervine Animal Cash Fund, which fund is hereby created. The fund shall be utilized by the department for the purpose of carrying out the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 12. Section 81-2,147.10, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,147.10 (1) No person who labels for sale in Nebraska agricultural, vegetable, or flower seeds shall sell such seeds in Nebraska unless he or she holds a valid seed permit. Application for the permit shall be made to the Department of Agriculture on forms prescribed and furnished by the department. ~~If the applicant is an individual, the application for a permit shall include the applicant's social security number.~~ Application forms shall be submitted to the department accompanied by an annual registration fee based on the number of pounds of agricultural, vegetable, or flower seed the applicant labeled and sold during the preceding calendar year. Registrations shall be renewed on or before January 1 of each year. If a person fails to renew the registration by January 31 of each year, such person shall also be required to pay a delinquency fee of twenty percent per month of the amount of the fee due, not to exceed one hundred percent of the annual registration fee. The purpose of the additional delinquency fee is to cover the administrative costs associated with collecting fees. All money collected as a delinquency fee shall be remitted to the State Treasurer for credit to the Nebraska Seed Administrative Cash Fund.

The annual registration fee shall be:

|                             |                                                                                                                                                       |
|-----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Fee:                        | Applicant sold:                                                                                                                                       |
| Twenty-five dollars         | Less than ten thousand pounds of agricultural seed (other than lawn and turf seed);                                                                   |
| Fifty dollars               | Ten thousand or more pounds of agricultural seed (other than lawn and turf seed) and less than two hundred fifty thousand pounds of any kind of seed; |
| One hundred dollars         | Two hundred fifty thousand or more pounds and less than five hundred thousand pounds of seeds;                                                        |
| Two hundred fifty dollars   | Five hundred thousand or more pounds and less than one million pounds of seeds;                                                                       |
| Three hundred fifty dollars | One million or more pounds and less than five million pounds of seeds;                                                                                |

Seven hundred fifty dollars                      Five million or more pounds of seeds.

(2) Subsection (1) of this section shall not apply if the agricultural, vegetable, or flower seeds being labeled and sold are of the breeder or foundation seed classes of varieties developed by publicly financed research agencies intended for the purpose of increasing the quantity of seed available.

(3) The director shall refuse to issue a permit when the application for such permit is not in compliance with the Nebraska Seed Law or any rules and regulations adopted and promulgated pursuant to such law and may cancel any permit when it is subsequently found to be in violation of any provision of such law, rule, or regulation or when the director has satisfactory evidence that the person has used fraudulent or deceptive practices in an attempted evasion of the law, rule, or regulation, except that no permit shall be refused or canceled until the person shall have been given an opportunity to be heard before the director.

Sec. 13. Section 89-187, Reissue Revised Statutes of Nebraska, is amended to read:

89-187 The director shall:

(1) Maintain traceability of the primary standards to the National Institute of Standards and Technology;

(2) Enforce the provisions of the Weights and Measures Act;

(3) Adopt and promulgate reasonable rules and regulations for the enforcement of the act including the following:

(a) Requirements for the voluntary registration of sales and repair personnel for commercial weighing and measuring devices including:

(i) Registration fees for such personnel which shall not exceed the actual cost to defray the operation of the voluntary registration program;

(ii)(A) Qualifications for registration, which may include examinations, (B) performance standards to maintain registration, (C) types of equipment necessary for the work to be performed by the personnel, (D) responsibilities and privileges of registration, and (E) revocation and suspension of such registration and probation of the registrant; and

(iii) Minimum standards for the installation and maintenance of commercial weighing and measuring devices;

(b) Additional standards not specifically provided for in the act;

(c) Standards for (i) attachments or parts entering into the construction or installation of commercial weighing and measuring devices which shall tend to secure correct results in the use of such devices and (ii) the setting of laboratory fees which shall not exceed the actual cost for testing, correcting, calibrating, and verifying secondary standards and the establishment of standard laboratory operating procedures;

(d) Requirements for the suitable use of commercial weighing and measuring devices; and

(e) Guidelines for the appropriate method of weighing or measuring whenever the director determines that such guidelines would further the purpose of the act;

(4) Establish standards of weight, measure, or count, reasonable standards of fill, and standards for the presentation of cost-per-unit information for any commodity;

(5) Upon an application filed with the department by the applicant, grant exemptions, including specific exemptions for single-use commercial weighing and measuring devices, from the provisions of the act or the rules and regulations when the applicant on such application provides assurances, acceptable to the director, that such exemption is appropriate to the maintenance of good commercial practices within the state. Notwithstanding any other provision of the act, meters used by a public utility system for the measurement of electricity, natural or manufactured gas, water, or the usage of communication services, the appliances or accessories associated with such meters, and all weighing and measuring devices inspected or tested by the Public Service Commission shall be exempt from the registration, inspection, and testing requirements of the act, except that this exemption shall not apply to meters which determine the weight or measurement of motor fuel;

(6) Conduct investigations to insure compliance with the act;

(7) Delegate to appropriate personnel any of these responsibilities for the proper administration of the director's office;

(8) In his or her discretion, inspect and test weighing and measuring devices kept for sale or sold;

(9) Inspect and test annually and from time to time, as in the director's judgment seems necessary, to ascertain whether commercial weighing and measuring devices are correct;

(10) Register and test as far as practical all commercial weighing and measuring devices used in checking the receipt or disbursement of supplies in every institution for which funds are appropriated by the Legislature;

(11) Test annually and at the request of the Nebraska State Patrol all weighing and measuring devices used for the enforcement of sections 60-3,144, 60-3,147, and 60-6,294. The agency responsible for such weighing and measuring devices shall pay the department for the actual cost of such tests. The department shall bill test fees to such agency upon completion of the test;

(12) Approve for use and may mark commercial weighing and measuring devices which the director finds to be correct and shall reject and mark or tag as rejected such commercial weighing and measuring devices which the director finds to be not correct or not registered and inspected in accordance with the Weights and Measures Act. Commercial weighing and measuring devices that have

been rejected may be seized if not made correct within the time specified or if used or disposed of in a manner not specifically authorized. The director shall condemn and may seize commercial weighing and measuring devices which are found not to be correct and not capable of being made correct;

(13) Weigh, measure, or inspect commodities kept for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept for sale or sold in accordance with the act or the rules and regulations. When commodities are found not to contain the amounts represented or are found to be kept for sale, sold, or in the process of delivery in violation of the act, the director may issue stop-sale, hold, or removal orders and may mark or tag such commodities as being in violation of the act. In carrying out the provisions of this section, the director shall employ recognized procedures pursuant to subdivisions (1)(b) through (d) of section 89-186;

(14) Provide for the weights and measures training of inspection personnel and adopt and promulgate by rule and regulation minimum training requirements which shall be met by all inspection personnel;

(15) Adopt and promulgate rules and regulations prescribing the appropriate term or unit of measurement to be used whenever the director determines in the case of a specific commodity that an existing practice of declaring the quantity by weight, measure, numerical count, or combination thereof does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion;

(16) Allow reasonable variations from the stated quantity of contents which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce;

(17) Verify advertised prices, price representations, and point-of-sale systems, as deemed necessary, to determine: (a) The accuracy of prices, quantity, and computations; (b) the correct use of the equipment; and (c) if such systems utilize scanning or coding means in lieu of manual entry, the accuracy of prices and quantity printed or recalled from a data base;

(18) On or before July 1 of each year, notify all persons who have registered any commercial weighing or measuring device of the amount of fees which are due and that the fees are due on August 1 and shall be delinquent after such date;

(19) Require all persons who operate a weighing and measuring establishment to obtain a permit to operate such establishment pursuant to section 89-187.01 and to pay to the department an application permit fee pursuant to section 89-187.02;

(20) Require all persons who operate a weighing and measuring establishment to, on or before August 1 of each year:

(a) Register each commercial weighing and measuring device with the department upon forms furnished by the director;

(b) Pay to the department a registration fee of four dollars; and

(c) Pay to the department a device inspection fee.

(i) The device inspection fee due August 1, 2003, shall be the amount in column A of subdivision (20)(c)(iii) of this section.

(ii) The device inspection fee due August 1, 2004, and each August 1 thereafter shall be set by the director on or before July 1 of each year. The director may raise or lower the device inspection fees each year to meet the criteria in this subdivision, but the fee shall not be greater than the amount in column B of subdivision (20)(c)(iii) of this section. The same percentage shall be applied to each device category for all device inspection fee increases or decreases. The director shall use the device inspection fees set for the fees due August 1, 2003, as a base for future fee increases or decreases. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balances as follows:

(A) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Weights and Measures Act; and

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

(iii)

| Scales:                                     | A     | B     |
|---------------------------------------------|-------|-------|
| Up through 35 pounds capacity               | 7.96  | 14.34 |
| Multiunit Scales                            | 51.00 | 80.37 |
| Over 35 through 1,000 pounds capacity       | 15.13 | 25.35 |
| Over 1,000 through 4,000 pounds capacity    | 31.87 | 51.03 |
| Over 4,000 through 50,000 pounds capacity   | 36.65 | 58.36 |
| Over 50,000 through 150,000 pounds capacity | 39.04 | 62.03 |

|                                                                                               |       |         |
|-----------------------------------------------------------------------------------------------|-------|---------|
| Over 150,000 pounds capacity                                                                  | 86.87 | 135.40  |
| Length Measuring Devices:                                                                     |       |         |
| Cordage or fabric                                                                             | 16.56 | 27.55   |
| Pumps:                                                                                        |       |         |
| Service Station Dispensers -- per measuring element                                           | 5.09  | 9.94    |
| High-capacity service station dispensers over 20 gallons per minute -- per dispensing element | 17.52 | 29.02   |
| Compressed natural gas -- per dispensing element                                              | 91.65 | 142.74  |
| Meters:                                                                                       |       |         |
| Vehicle tank meters                                                                           | 14.17 | 23.88   |
| Loading rack meters                                                                           | 31.87 | 51.03   |
| Liquid petroleum gas meters                                                                   | 40.00 | 63.50   |
| Liquid fertilizer and herbicide meters                                                        | 36.65 | 58.36   |
| Liquid feed meters                                                                            | 36.65 | 58.36   |
| Cryogenic                                                                                     | 53.39 | 84.04   |
| Mass Flow Metering Systems:                                                                   |       |         |
| Mass flow meters (all liquid)                                                                 | 78.26 | 122.19; |
| and                                                                                           |       |         |

(21) Require persons delinquent under subdivision (20) of this section to pay an administrative fee ~~a penalty~~ of twenty-five percent of the annual fees due for each month any such fees are delinquent not to exceed one hundred percent of such fees. Such administrative fees ~~penalties~~ paid shall be in addition to the annual fees due. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees. All money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Weights and Measures Administrative Fund ~~The department may waive the penalty based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fees.~~

Sec. 14. Section 89-187.02, Reissue Revised Statutes of Nebraska, is amended to read:

89-187.02 Application for a permit to operate a weighing and measuring establishment shall be made to the director on forms prescribed and furnished by the department. Such application shall include the full name and mailing address of the applicant; the names and addresses of any partners, members, or corporate officers; the name and address of the person authorized by the applicant to receive notices and orders of the department as provided in the Weights and Measures Act; whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity; the location and type of all commercial weighing and measuring devices; and the signature of the applicant. ~~If the applicant is an individual, the application shall include the applicant's social security number.~~ An application for a permit shall be made prior to the operation of a weighing and measuring establishment. The application shall be accompanied by a one-time permit fee of five dollars and the annual device registration and inspection fees required in section 89-187. The full annual device registration and inspection fees are required regardless of when during the year the device is put into operation.

Sec. 15. Section 89-188, Reissue Revised Statutes of Nebraska, is amended to read:

89-188 When necessary for the enforcement of the Weights and Measures Act or the rules and regulations adopted pursuant to the act, the director may:

(1) Enter any commercial premises during normal business hours, except that in the event such premises are not open to the public, the director shall first present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained;

(2) Issue stop-use, hold, and removal orders with respect to any commercial weighing and measuring device and stop-sale, hold, and removal orders with respect to any commodity kept for sale or sold;



(3) Seize, for use as evidence, without formal warrant, any commercial weighing and measuring device which is not correct or is not approved by the department or commodity found to be used, kept for sale, or sold in violation of the provisions of the act or the rules and regulations;

(4) Stop any commercial vehicle from which commodities are kept for sale, sold, or in the process of delivery on the basis of weight, measure, or count and, after presentment of his or her credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his or her possession concerning the contents, and require him or her to proceed with the vehicle to a specified place for inspection;

(5) Charge and collect all fees and ~~penalties~~ prescribed by the act and the rules or regulations;

(6) Access all books, papers, and other information necessary for the enforcement of the act. If after inspection the director finds or has reason to believe that the requirements set forth in the act are not being met, he or she shall have access to all books, papers, records, bills of lading, invoices, and other pertinent data relating to the use, sale, or representation of any commodity including weighing and measuring devices within this state;

(7) Cooperate with and enter into agreements with any person in order to carry out the purposes of the act;

(8) Inspect weighing and measuring devices which are not required to be registered upon the request of the owner of such devices and seek reimbursement for the actual cost of the inspection;

(9) Establish an authorized laboratory under the National Conference on Weights and Measures, National Type Evaluation Program, and conduct field testing of weighing and measuring devices to determine if such devices meet the requirements in order to issue a Certificate of Conformance. The department shall be reimbursed for the actual cost of such tests by the person seeking such certification; and

(10) Enter into a settlement with any person regarding the disposition of any permit or cease and desist order.

Sec. 16. Section 89-197, Reissue Revised Statutes of Nebraska, is amended to read:

89-197 It shall be unlawful for any person to:

(1) Use in commerce any weighing and measuring device which is not correct;

(2) Remove any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the department from any weighing and measuring device or commodity without specific written authorization from the department;

(3) Fail to report to the department when any tag, seal, or mark of a stop-use, stop-sale, hold, or removal order issued by the department has been removed from any weighing and measuring device or commodity without specific written authorization from the department if such person operates a weighing and measuring establishment and knows or has reason to know the tag, seal, or mark has been removed;

(4) Hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(5) Maintain or have in his or her possession any commercial weighing and measuring device that has not been registered and inspected in accordance with the provisions of the Weights and Measures Act;

(6) Sell or keep for sale less than the quantity he or she represents of a commodity;

(7) Take more than the quantity he or she represents of a commodity when, as buyer, he or she furnishes the weight or measure by means of which the amount of the commodity is determined;

(8) Operate any weighing and measuring establishment without a valid permit, while the permit is suspended, or after the permit has been revoked if a permit is required by the act;

(9) Determine a gross weight and tare weight to arrive at a net weight by the use in commerce of different weighing and measuring devices that in combination will not meet the absolute value of maintenance tolerance;

(10) Falsify in any manner, by any means, or by or through a representative a recorded representation or documentation from any weighing and measuring device or any representation or delivery ticket of a commodity bought or sold by weight, measure, or count;

(11) Use any commercial weighing and measuring device in a commercial application unless a Certificate of Conformance has been issued for such device unless exempt in section 89-186.01;

(12) Sell any weighing and measuring device for use in a commercial application unless a Certificate of Conformance has been issued for such devices unless exempt in section 89-186.01;

(13) Use, add to, or modify a commercial weighing and measuring device in any way which makes the device not correct unless such change has been authorized by the director as provided for in the act;

(14) Misrepresent the price of any commodity kept for sale or sold by weight, measure, or count or represent the price in any manner calculated or tending to mislead or in any way deceive a person;

(15) Misrepresent the quantity of any commodity kept for sale or sold or represent the quantity in any manner calculated or tending to mislead or in any way deceive a person;

(16) Fail to pay all fees and ~~penalties~~ as prescribed by the act and the rules and regulations adopted and promulgated pursuant to the act;

(17) Refuse to keep and make available for examination by the department

all books, papers, and other information necessary for the enforcement of the act; or

(18) Use commercial weighing and measuring devices not in accordance with rules and regulations adopted and promulgated by the director pursuant to subdivision (3)(d) of section 89-187.

Sec. 17. Section 89-1,100, Reissue Revised Statutes of Nebraska, is amended to read:

89-1,100 The director shall collect registration, permit, laboratory, test, ~~administrative,~~ and inspection fees, ~~penalties,~~ and money required to be reimbursed as provided for in the Weights and Measures Act and shall remit such funds to the State Treasurer. The State Treasurer shall credit such funds to the Weights and Measures Administrative Fund, which fund is hereby created. All fees, ~~penalties,~~ and reimbursements collected pursuant to the act and credited to the fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any unexpended balance in the Weights and Measures Administrative Fund at the close of any biennium shall, when reappropriated, be available for the uses and purposes of the fund for the succeeding biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The registration, permit, laboratory, test, ~~administrative,~~ and inspection fees, ~~penalties,~~ and money required to be reimbursed as provided for in the Weights and Measures Act shall constitute a lien on the weighing and measuring devices or standards required to be registered or approved for use in this state until such fees, ~~penalties,~~ and reimbursements are paid. The director may sue for such fees, ~~penalties,~~ and reimbursements and may seek to foreclose on any lien in the name of the state. The county attorney of the county in which the device is located or the Attorney General's office shall, upon the request of the director, take appropriate action to establish and foreclose on any such lien.

Sec. 18. Original sections 2-1807, 2-1808, 54-635, 54-850, 54-856, 54-1371, 54-1382, 54-1704, 54-1904, 54-2306, 54-2320, 81-2,147.10, 89-187, 89-187.02, 89-188, 89-197, and 89-1,100, Reissue Revised Statutes of Nebraska, are repealed.