

LEGISLATURE OF NEBRASKA
 ONE HUNDREDTH LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 110

Introduced By: Erdman, 47;
 Read first time: January 8, 2007
 Committee: Agriculture

A BILL

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

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

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

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

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

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

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

20 (4) Bovine means cattle and bison;

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

23 (6) Designated accredited veterinarian means an accredited
24 veterinarian trained and approved to conduct specific bovine
25 tuberculosis tests such as the bovine interferon gamma assay, other
26 bovine tuberculosis program activities, or both; and

27 (7) State Veterinarian means the veterinarian in charge of

1 the Bureau of Animal Industry within the department or his or her
2 designee, subordinate to the director.

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

15 (2) Certified copies of the portion of the federal
16 regulations and the rules adopted by reference pursuant to this
17 section shall be filed in the offices of the Secretary of State,
18 Clerk of the Legislature, and department.

19 Sec. 5. (1) The Bovine Tuberculosis Act shall be
20 administered and enforced by the Bureau of Animal Industry of the
21 department.

22 (2) In administering the act, the department shall
23 cooperate and contract with persons or appropriate local, state, or
24 national organizations, public or private, for the performance of
25 activities required or authorized pursuant to the act. The department
26 may also cooperate with the APHIS in (a) the control and eradication
27 of bovine tuberculosis in this state and (b) recommending where and

1 how any available federal funds and state personnel and materials are
2 allocated for the purpose of bovine tuberculosis control and
3 eradication.

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

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

17 Sec. 6. Any person who discovers, suspects, or has reason
18 to believe that any animal belonging to him, her, or another person or
19 which he or she has in his or her possession or custody is exhibiting
20 signs consistent with bovine tuberculosis shall immediately report
21 such fact, belief, or suspicion to the State Veterinarian.

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

25 Sec. 7. (1) The department by rule and regulation may
26 prescribe the manner, method, and system of testing livestock or any
27 other animal suspected of being affected with or exposed to M. bovis

1 under a cooperative program.

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

5 (3) Accredited veterinarians are authorized to apply only
6 the caudal fold tuberculin test. Tuberculin tests shall be conducted
7 by a veterinarian employed by the department or APHIS or by a
8 designated accredited veterinarian. All tests are official tests and
9 shall be reported to the State Veterinarian on an official bovine
10 tuberculosis test chart. Such report shall include the official
11 identification, age, sex, and breed of each animal and a record of
12 all responses and test interpretations.

13 Sec. 8. (1) The State Veterinarian may immediately
14 quarantine any animal and the premises on which such animal is located
15 if bovine tuberculosis is suspected or has been diagnosed in an
16 animal on such premises.

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

20 (3) No person shall prevent the testing of or remove any
21 animal which has been placed in quarantine pursuant to this section
22 from the place of quarantine until such quarantine is released by the
23 State Veterinarian, except authorized movement for slaughter or other
24 movement as authorized by the State Veterinarian. Any person who
25 violates this subsection is guilty of a Class II misdemeanor. Each
26 animal moved, purchased, sold, traded, bartered, granted, loaned, or
27 otherwise transferred in violation of this subsection is a separate

1 violation.

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

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

8 Sec. 10. The owner or custodian of an affected herd shall
9 assemble and submit such herd for bovine tuberculosis examination and
10 testing and shall provide reasonable assistance in confining the
11 animals and providing facilities for proper administration of the
12 testing. Any person who interferes or obstructs anyone in such work
13 or attempts to obstruct or prevent by force the carrying on of such
14 examination and testing is guilty of a Class II misdemeanor.

15 Sec. 11. The department may assess and collect payment for
16 services provided and expenses incurred pursuant to its
17 responsibilities under the Bovine Tuberculosis Act and the rules and
18 regulations adopted and promulgated pursuant thereto. All payments
19 assessed and collected pursuant to this section shall be remitted to
20 the State Treasurer for credit to the Bovine Tuberculosis Cash Fund.

21 Sec. 12. The Bovine Tuberculosis Cash Fund is created. The
22 fund shall consist of money appropriated by the Legislature and gifts,
23 grants, costs, or charges from any source, including federal, state,
24 public, and private sources. The fund shall be used to carry out the
25 Bovine Tuberculosis Act. Any money in the fund available for
26 investment shall be invested by the state investment officer pursuant
27 to the Nebraska Capital Expansion Act and the Nebraska State Funds

1 Investment Act.

2 Sec. 13. (1) The department may provide state funds to or
3 on behalf of herd owners for certain activities or any portion thereof
4 in connection with the implementation of the Bovine Tuberculosis Act
5 if funds for any activities or any portion have been appropriated.
6 The department may develop statewide priorities for the expenditure
7 of state funds available for bovine tuberculosis control and
8 eradication program activities.

9 (2) Part of such state funds may be used by the department
10 to pay a portion of the cost of testing done by or for accredited
11 veterinarians if such work is approved by the department.

12 (3) In administering the act and program activities
13 pursuant to the act, the department shall not pay for (a) testing done
14 for change of ownership at private treaty or at concentration points,
15 (b) costs of gathering, confining, and restraining animals subjected
16 to testing or costs of providing necessary facilities and assistance,
17 (c) costs of testing to qualify or maintain herd accreditation, or
18 (d) indemnity for any animal destroyed as a result of being affected
19 with bovine tuberculosis.

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

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

25 (2) No person, including a veterinarian, shall inject or
26 apply tuberculin into or on any animal for the purpose of plugging,
27 for the purpose of fraudulently concealing the presence of bovine

1 tuberculosis in such animal, or for the purpose of preventing future
2 reactions to tuberculin.

3 Sec. 15. (1) In order to insure compliance with the Bovine
4 Tuberculosis Act, the department may apply for a temporary restraining
5 order, a temporary or permanent injunction, or a mandatory injunction
6 against any person violating or threatening to violate the act or the
7 rules and regulations adopted and promulgated under the act. The
8 district court of the county where the violation is occurring or is
9 about to occur shall have jurisdiction to grant such relief upon good
10 cause shown. Relief may be granted notwithstanding the existence of
11 any other remedy at law and shall be granted without bond.

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

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

25 Sec. 16. (1) Whenever the Director of Agriculture or the
26 State Veterinarian has reason to believe that any person has violated
27 any of the provisions of the Bovine Tuberculosis Act or any rules or

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

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

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

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

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

26 2-3918. All herds shall meet the following herd health
27 requirements:

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

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

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

23 Sec. 19. Original section 2-3918, Reissue Revised Statutes
24 of Nebraska, is repealed.

25 Sec. 20. The following sections are outright repealed:
26 Sections 54-706, 54-707, 54-708, 54-709, 54-710, 54-711, 54-712,
27 54-713, 54-714, 54-715, 54-716, 54-717, 54-718, 54-719, 54-720,

1 54-721, and 54-722, Reissue Revised Statutes of Nebraska.