

E AND R AMENDMENTS TO LB 254

Introduced by Enrollment and Review Committee: Nordquist, 7,
Chairperson

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 2-2622, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 2-2622 Sections 2-2622 to 2-2654 and sections 2 to 6 of
6 this act shall be known and may be cited as the Pesticide Act.

7 Sec. 2. (1) A person shall not apply pesticides by use
8 of an aircraft or cause or arrange aerial pesticide spraying
9 operations to occur on the property of another unless such
10 person holds a Nebraska aerial pesticide business license for
11 the principal departure location of the aircraft to be used.
12 Any person applying pesticides without a principal departure
13 location licensed in this state and who applies pesticides by
14 use of an aircraft within this state may obtain a Nebraska aerial
15 pesticide business license for the principal out-of-state departure
16 location. An individual licensed as a commercial applicator shall
17 apply pesticides by use of an aircraft only under the direct
18 supervision of a person holding a Nebraska aerial pesticide
19 business license. Such supervising license holder is jointly
20 liable with the commercial applicator for any damages caused
21 by the commercial applicator. An individual who is licensed as
22 a commercial applicator with an aerial pest control category may
23 perform aerial operations without the supervision by a person

1 holding a Nebraska aerial pesticide business license if the
2 commercial aerial applicator acquires a Nebraska aerial pesticide
3 business license. For purposes of sections 2 to 6 of this act,
4 unless utilizing a licensed aerial pesticide business to perform
5 the application of pesticides by use of an aircraft, a person
6 causing or arranging aerial pesticide spraying operations shall
7 include a person performing billing and collection of payment for
8 aerial spraying services performed, employing or contracting with
9 pilots to perform aerial applications, assigning aerial spraying
10 work orders to pilots, or paying compensation to pilots for aerial
11 spraying services performed whether or not such person is licensed
12 as a commercial applicator.

13 (2) Sections 2 to 6 of this act shall not apply to
14 aerial spraying operations conducted by federal, state, or local
15 government with public aircraft.

16 Sec. 3. (1) An application for an initial or renewal
17 Nebraska aerial pesticide business license shall be submitted
18 to the department prior to the commencement of aerial spraying
19 operations, and an application for renewal of a Nebraska aerial
20 pesticide business license shall be submitted to the department
21 by January 1 of each year. The application shall be accompanied
22 by an annual license fee of one hundred dollars. The license fee
23 may be increased by the director after a public hearing is held
24 outlining the reason for any proposed change in the fee, except
25 that the fee shall not exceed one hundred fifty dollars. All fees
26 collected pursuant to this section shall be remitted to the State
27 Treasurer for credit to the Pesticide Administrative Cash Fund. The

1 application shall be on a form prescribed by the department and
2 shall include the following:

3 (a) The full name and permanent mailing address of
4 the person applying for such license. If such applicant is an
5 individual, the application shall include the applicant's personal
6 mailing address and social security number. If such applicant is
7 not an individual, the full name of each partner or member or
8 the full name of the principal officers shall be given on the
9 application;

10 (b) The location of the applicant's principal departure
11 location and any additional departure locations utilized for aerial
12 spraying operations to be conducted within Nebraska identified by
13 one of the following: Global Positioning System coordinants, legal
14 description, local address of the site, or airport identifier;

15 (c) A copy of the applicant's agricultural aircraft
16 operator certificate issued pursuant to 14 C.F.R. part 137 or
17 evidence the applicant holds such a certificate issued by the
18 Federal Aviation Administration;

19 (d) The aircraft registration number issued by the
20 Federal Aviation Administration pursuant to 14 C.F.R. part 47
21 of all aircraft owned, rented, or leased by the applicant to be
22 utilized for aerial pesticide applications and all other aircraft
23 utilized in aerial spraying operations conducted by the applicant;

24 (e) The Nebraska commercial applicator certificate number
25 and current Federal Aviation Administration commercial pilot
26 certificate number of all persons operating aircraft for the aerial
27 application of pesticides during any aerial spraying operations

1 conducted by the applicant; and

2 (f) Such other information as deemed necessary by the
3 director to determine the suitability of the applicant for
4 licensure as an aerial pesticide business.

5 (2) An applicant located outside this state shall file
6 with the department a written designation of a resident agent
7 for service of process in actions taken in the administration and
8 enforcement of the Pesticide Act. In lieu of designating a resident
9 agent, the applicant may designate the Secretary of State as the
10 recipient of service of process for the applicant in this state.

11 Sec. 4. Prior to commencing aerial spraying operations, a
12 person holding a Nebraska aerial pesticide business license shall
13 immediately report all aircraft, pilots, and departure locations
14 utilized for the operation if different from or in addition to
15 the information provided in the person's initial or renewal license
16 application. If a pilot or aircraft is to be utilized for seasonal
17 operations or on a temporary basis, the license holder shall
18 notify the director of the approximate dates of commencement and
19 termination of the utilization of supplemental pilots or aircraft.

20 Sec. 5. Each Nebraska aerial pesticide business license
21 holder is responsible for the acts of each person applying
22 pesticides on lands within this state under the direction and
23 supervision of the business. The aerial pesticide business's
24 license is subject to denial, suspension, modification, or
25 revocation after a hearing for any violation of the Pesticide
26 Act, whether committed by the license holder, the license holder's
27 agent, or the license holder's employee.

1 Sec. 6. Each aerial pesticide business shall maintain
2 records of applications of pesticides by use of an aircraft that
3 are required by the department, and the department may require
4 such records to be kept separate from other business records. The
5 department may adopt and promulgate rules and regulations regarding
6 the information to be included in the records. The aerial pesticide
7 business shall keep such records for a period of at least three
8 years, provide the department with access to examine such records,
9 and provide the department a copy of any such record upon request.

10 Sec. 7. Section 2-2626, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 2-2626 The department shall have the following powers,
13 functions, and duties:

14 (1) To administer, implement, and enforce the Pesticide
15 Act and serve as the lead state agency for the regulation of
16 pesticides. The department shall involve the natural resources
17 districts and other state agencies, including the Department of
18 Environmental Quality, the Department of Natural Resources, or the
19 Department of Health and Human Services, in matters relating to
20 water quality. Nothing in the act shall be interpreted in any way
21 to affect the powers of any other state agency or of any natural
22 resources district to regulate for ground water quality or surface
23 water quality as otherwise provided by law;

24 (2) To be responsible for the development and
25 implementation of a state management plan and pesticide management
26 plans. The Department of Environmental Quality shall be responsible
27 for the adoption of standards for pesticides in surface water and

1 ground water, and the Department of Health and Human Services
2 shall be responsible for the adoption of standards for pesticides
3 in drinking water. These standards shall be established as action
4 levels in the state management plan and pesticide management plans
5 at which prevention and mitigation measures are implemented. Such
6 action levels may be set at or below the maximum contaminant
7 level set for any product as set by the federal agency under the
8 federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the
9 act existed on January 1, 2006. The Department of Agriculture shall
10 cooperate with and use existing expertise in other state agencies
11 when developing the state management plan and pesticide management
12 plans and shall not hire a hydrologist within the department for
13 such purpose;

14 (3) After notice and public hearing, to adopt
15 and promulgate rules and regulations providing lists of
16 state-limited-use pesticides for the entire state or for a
17 designated area within the state, subject to the following:

18 (a) A pesticide shall be included on a list of
19 state-limited-use pesticides if:

20 (i) The Department of Agriculture determines that the
21 pesticide, when used in accordance with its directions for use,
22 warnings, and cautions and for uses for which it is registered,
23 may without additional regulatory restrictions cause unreasonable
24 adverse effects on humans or the environment, including injury
25 to the applicator or other persons because of acute dermal or
26 inhalation toxicity of the pesticides;

27 (ii) The water quality standards set by the Department

1 of Environmental Quality or the Department of Health and Human
2 Services pursuant to this section are exceeded; or

3 (iii) The Department of Agriculture determines that the
4 pesticide requires additional restrictions to meet the requirements
5 of the Pesticide Act, the federal act, or any plan adopted under
6 the Pesticide Act or the federal act;

7 (b) The Department of Agriculture may regulate the time
8 and conditions of use of a state-limited-use pesticide and may
9 require that it be purchased or possessed only:

10 (i) With permission of the department;

11 (ii) Under direct supervision of the department or its
12 designee in certain areas and under certain conditions;

13 (iii) In specified quantities and concentrations or at
14 specified times; or

15 (iv) According to such other restrictions as the
16 department may set by regulation;

17 (c) The Department of Agriculture may require a person
18 authorized to distribute or use a state-limited-use pesticide to
19 maintain records of the person's distribution or use and may
20 require that the records be kept separate from other business
21 records;

22 (d) The state management plan and pesticide management
23 plans shall be coordinated with the Department of Agriculture and
24 other state agency plans and with other state agencies and with
25 natural resources districts;

26 (e) The state management plan and pesticide management
27 plans may impose progressively more rigorous pesticide management

1 practices as pesticides are detected in ground water or surface
2 water at increasing fractions of the standards adopted by the
3 Department of Environmental Quality or the Department of Health and
4 Human Services; and

5 (f) A pesticide management plan may impose progressively
6 more rigorous pesticide management practices to address any
7 unreasonable adverse effect of pesticides on humans or the
8 environment. When appropriate, a pesticide management plan may
9 establish action levels for imposition of such progressively more
10 rigorous management practices based upon measurable indicators of
11 the adverse effect on humans or the environment;

12 (4) To adopt and promulgate such rules and regulations
13 as are necessary for the enforcement and administration of the
14 Pesticide Act. The regulations shall include, but not be limited
15 to, regulations providing for:

16 (a) The collection of samples, examination of records,
17 and reporting of information by persons subject to the act;

18 (b) The safe handling, transportation, storage, display,
19 distribution, use, and disposal of pesticides and their containers;

20 (c) Labeling requirements of all pesticides required
21 to be registered under provisions of the act, except that
22 such regulations shall not impose any requirements for federally
23 registered labels contrary to those required pursuant to the
24 federal act;

25 (d) Classes of devices which shall be subject to the
26 Pesticide Act;

27 (e) Reporting and record-keeping requirements for persons

1 distributing or using pesticide products made available under
2 section 136p of the federal act and for persons required to keep
3 records under the Pesticide Act;

4 (f) Methods to be used in the application of pesticides
5 when the Department of Agriculture finds that such regulations are
6 necessary to carry out the purpose and intent of the Pesticide
7 Act. Such regulations may include methods to be used in the
8 application of a restricted-use pesticide, may relate to the time,
9 place, manner, methods, materials, amounts, and concentrations
10 in connection with the use of the pesticide, may restrict
11 or prohibit use of the pesticides in designated areas during
12 specified periods of time, and may provide specific examples and
13 technical interpretations of subdivision (4) of section 2-2646.
14 The regulations shall encompass all reasonable factors which the
15 department deems necessary to prevent damage or injury by drift or
16 misapplication to (i) plants, including forage plants, or adjacent
17 or nearby property, (ii) wildlife in the adjoining or nearby
18 areas, (iii) fish and other aquatic life in waters in reasonable
19 proximity to the area to be treated, (iv) surface water or ground
20 water, and (v) humans, animals, or beneficial insects. In adopting
21 and promulgating such regulations, the department shall give
22 consideration to pertinent research findings and recommendations
23 of other agencies of the state, the federal government, or other
24 reliable sources. The department may, by regulation, require that
25 notice of a proposed use of a pesticide be given to landowners
26 whose property is adjacent to the property to be treated or in the
27 immediate vicinity thereof if the department finds that such notice

1 is necessary to carry out the purpose of the act;

2 (g) State-limited-use pesticides for the state or for
3 designated areas in the state;

4 (h) Establishment of the amount of any fee or fine as
5 directed by the act;

6 (i) Establishment of the components of any state
7 management plan or pesticide management plan;

8 (j) Establishment of categories for licensed pesticide
9 applicators in addition to those established in 40 C.F.R. 171, as
10 the regulation existed on January 1, 2006; and

11 (k) Establishment of a process for the issuance of
12 permits for emergency-use pesticides made available under section
13 136p of the federal act;

14 (5) To enter any public or private premises at any
15 reasonable time to:

16 (a) Inspect and sample any equipment authorized or
17 required to be inspected under the Pesticide Act or to inspect
18 the premises on which the equipment is kept or stored;

19 (b) Inspect or sample any area exposed or reported to be
20 exposed to a pesticide or where a pesticide use has occurred;

21 (c) Inspect and sample any area where a pesticide is
22 disposed of or stored;

23 (d) Observe the use and application of and sample any
24 pesticide;

25 (e) Inspect and copy any records relating to the
26 distribution or use of any pesticide or the issuance of any
27 license, permit, or registration under the act; or

1 (f) Inspect, examine, or take samples from any
2 application equipment, building, or place owned, controlled, or
3 operated by a registrant, licensed certified applicator, or dealer
4 any person engaging in an activity regulated by the act if,
5 from probable cause, it appears that the application equipment,
6 building, or place contains a pesticide;

7 (6) To sample, inspect, make analysis of, and test any
8 pesticide found within this state;

9 (7) To issue and enforce a written or printed order to
10 stop the sale, removal, or use of a pesticide if the Department
11 of Agriculture has reason to believe that the pesticide is in
12 violation of any provision of the act. The department shall present
13 the order to the owner or custodian of the pesticide. The person
14 who receives the order shall not distribute, remove, or use the
15 pesticide until the department determines that the pesticide is in
16 compliance with the act. This subdivision shall not limit the right
17 of the department to proceed as authorized by any other provision
18 of the act;

19 (8) (a) To sue in the name of the director to enjoin
20 any violation of the act. Venue for such action shall be in the
21 county in which the alleged violation occurred, is occurring, or is
22 threatening to occur; and

23 (b) To request the county attorney or the Attorney
24 General to bring suit to enjoin a violation or threatened violation
25 of the act;

26 (9) To impose or levy an administrative fine of not
27 more than five thousand dollars on any person who has violated

1 the provisions, requirements, conditions, limitations, or duties
2 imposed by the act or rules and regulations adopted and promulgated
3 pursuant to the act. A violation means any separate activity or day
4 in which an activity takes place;

5 (10) To cause a violation warning letter to be served
6 upon the alleged violator or violators pursuant to the act;

7 (11) To take measures necessary to ensure that all fees,
8 fines, and penalties prescribed by the act and the rules or
9 regulations adopted under the act are assessed and collected;

10 (12) To access, inspect, and copy all books, papers,
11 records, bills of lading, invoices, and other information
12 relating to the use, manufacture, repackaging, and distribution of
13 pesticides necessary for the enforcement of the act;

14 (13) To seize, for use as evidence, without formal
15 warrant if probable cause exists, any pesticide which is in
16 violation of the act or is not approved by the Department of
17 Agriculture or which is found to be used or distributed in the
18 violation of the act or the rules and regulations adopted and
19 promulgated under it;

20 (14) To declare as a pest any form of plant or animal
21 life, other than humans and other than bacteria, viruses, and other
22 microorganisms on or in living humans or other living animals,
23 which is injurious to health or the environment;

24 (15) To adopt classifications of restricted-use
25 pesticides as determined by the federal agency under the federal
26 act. In addition to the restricted-use pesticides classified by
27 the administrator, the Department of Agriculture may also determine

1 state-limited-use pesticides for the state or for designated areas
2 within the state as provided in subdivision (3) of this section;

3 (16) To receive grants-in-aid from any federal entity,
4 and to enter into cooperative agreements with any federal entity,
5 any agency of this state, any subdivision of this state, any agency
6 of another state, any Indian tribe, or any private person for
7 the purpose of obtaining consistency with or assistance in the
8 implementation of the Pesticide Act. The Department of Agriculture
9 may reimburse any such entity from the Pesticide Administrative
10 Cash Fund for the work performed under the cooperative agreement.
11 The department may delegate its administrative responsibilities
12 under the act to cities of the metropolitan and primary classes
13 if it reasonably believes that such cities can perform the
14 responsibilities in a manner consistent with the act and the
15 rules and regulations adopted and promulgated under it;

16 (17) To prepare and adopt such plans as are necessary to
17 implement any requirements of the federal agency under the federal
18 act;

19 (18) To request the assistance of the Attorney General
20 or the county attorney in the county in which a violation of the
21 Pesticide Act has occurred with the prosecution or enforcement of
22 any violation of the act;

23 (19) To enter into a settlement agreement with any person
24 regarding the disposition of any license, permit, registration, or
25 administrative fine;

26 (20) To issue a cease and desist order pursuant to
27 section 2-2649;

1 (21) To deny an application or cancel, suspend, or modify
2 the registration of a pesticide pursuant to section 2-2632;

3 (22) To issue, cancel, suspend, modify, or place on
4 probation any license or permit issued pursuant to the act; and

5 (23) To make such reports to the federal agency as are
6 required under the federal act.

7 Sec. 8. Section 2-2646, Revised Statutes Supplement,
8 2009, is amended to read:

9 2-2646 It shall be unlawful for any person:

10 (1) To distribute within the state or deliver for
11 transportation or transport in intrastate commerce or between
12 points within this state through a point outside this state, any of
13 the following:

14 (a) A pesticide that has not been registered or whose
15 registration has been canceled or suspended under the Pesticide
16 Act;

17 (b) A pesticide that has a claim, a direction for its
18 use, or labeling that differs from the representations made in
19 connection with its registration;

20 (c) A pesticide that is not in the registrant's or
21 manufacturer's unbroken immediate container and that is not labeled
22 with the information and in the manner required by the act and any
23 regulations adopted under the act;

24 (d) A pesticide that is adulterated;

25 (e) A pesticide or device that is misbranded;

26 (f) A pesticide in a container that is unsafe due to
27 damage;

1 (g) A pesticide which differs from its composition as
2 registered; or

3 (h) A pesticide that has not been colored or discolored
4 as required by the Pesticide Act or the federal act;

5 (2) To detach, alter, deface, or destroy, wholly or in
6 part, any label or labeling provided for by the Pesticide Act or a
7 rule or regulation adopted under the act;

8 (3) To add any substance to or take any substance from a
9 pesticide in a manner that may defeat the purpose of the act or any
10 rule or regulation adopted and promulgated under the act;

11 (4) To use or cause to be used a pesticide contrary
12 to the act, to the labeling of the pesticide, or to a rule or
13 regulation of the department limiting the use of the pesticide,
14 except that it shall not be unlawful to:

15 (a) Use a pesticide at any dosage, concentration, or
16 frequency less than that specified or recommended on the labeling
17 if the labeling does not specifically prohibit deviation from the
18 specified or recommended dosage, concentration, or frequency or, if
19 the pesticide is a termiticide, it is not used at a rate below
20 the minimum concentration specified or recommended on the label for
21 preconstruction treatments;

22 (b) Use a pesticide against any target pest not specified
23 on the labeling if the use is for the crop, animal, or site
24 specified or recommended on the labeling and the labeling does not
25 specifically state that the pesticide may be used only for the
26 pests specified or recommended on the labeling;

27 (c) Employ any method of use not prohibited by the

1 labeling if (i) the labeling does not specifically state that the
2 product may be used only by the methods specified or recommended on
3 the labeling, (ii) the method of use is consistent with the method
4 specified on labeling, and (iii) the method of use does not more
5 than minimally increase the exposure of the pesticide to humans or
6 the environment;

7 (d) Mix a pesticide or pesticides with a fertilizer when
8 such mixture is not prohibited by the labeling if such mixing is
9 consistent with the method of application specified or recommended
10 on the labeling and does not more than minimally increase the
11 exposure of the pesticide to humans or the environment;

12 (e) Use a pesticide in conformance with section 136c,
13 136p, or 136v of the federal act or section 2-2626; or

14 (f) Use a pesticide in a manner that the director
15 determines to be consistent with the purposes of the Pesticide Act;

16 (5) To use a pesticide at any dosage, concentration, or
17 frequency greater than specified or recommended on the labeling
18 unless the labeling allows the greater dosage, concentration, or
19 frequency;

20 (6) To handle, transport, store, display, or distribute a
21 pesticide in a manner that violates any provision of the Pesticide
22 Act or a rule or regulation adopted and promulgated under the act;

23 (7) To use, cause to be used, dispose, discard, or store
24 a pesticide or pesticide container in a manner that the person
25 knows or should know is:

26 (a) Likely to adversely affect or cause injury to
27 humans, the environment, vegetation, crops, livestock, wildlife,

1 or pollinating insects;

2 (b) Likely to pollute a water supply or waterway; or

3 (c) A violation of the Environmental Protection Act or a
4 rule or regulation adopted and promulgated pursuant to the act;

5 (8) To use for the person's advantage or reveal, other
6 than to a properly designated state or federal official or
7 employee, to a physician, or in an emergency to a pharmacist
8 or other qualified person for the preparation of an antidote,
9 any information relating to pesticide formulas, trade secrets, or
10 commercial or financial information acquired under the Pesticide
11 Act and marked as privileged or confidential by the registrant;

12 (9) To commit an act for which a licensed certified
13 applicator's license may be suspended, modified, revoked, or placed
14 on probation under the Pesticide Act whether or not the person
15 committing the act is a licensed certified applicator;

16 (10) To knowingly or intentionally use, cause to be used,
17 handle, store, or dispose of a pesticide in a manner that causes
18 bodily injury to or the death of a human or that pollutes ground
19 water, surface water, or a water supply;

20 (11) To fail to obtain a license or to pay all fees and
21 penalties as prescribed by the act and the rules and regulations
22 adopted and promulgated pursuant to the act;

23 (12) To fail to keep or refuse to make available for
24 examination and copying by the department all books, papers,
25 records, and other information necessary for the enforcement of the
26 act;

27 (13) To hinder, obstruct, or refuse to assist the

1 director in the performance of his or her duties;

2 (14) To violate any state management plan or pesticide
3 management plan developed or approved by the department;

4 (15) To distribute or advertise any restricted-use
5 pesticide for some other purpose other than in accordance with the
6 Pesticide Act and the federal act;

7 (16) To use any pesticide which is under an
8 experimental-use or emergency-use permit which is contrary to the
9 provisions of such permit;

10 (17) To fail to follow any order of the department;

11 (18) Except as authorized by law, to knowingly or
12 intentionally use, cause to be used, handle, store, or dispose
13 of a pesticide on property without the permission of the owner or
14 lawful tenant. Applications for outdoor vector control authorized
15 by a federal or state agency or political subdivision shall not be
16 in violation of this subdivision when the application is made from
17 public access property and cannot practically be confined to public
18 property;

19 (19) To knowingly falsify all or part of any application
20 for registration or licensing or any other records required to be
21 maintained pursuant to the Pesticide Act;

22 (20) To alter or falsify all or part of a license issued
23 by the department; and

24 (21) To violate any other provision of the act.

25 Sec. 9. This act becomes operative on May 1, 2010.

26 Sec. 10. Original sections 2-2622 and 2-2626, Reissue
27 Revised Statutes of Nebraska, and section 2-2646, Revised Statutes

1 Supplement, 2009, are repealed.

2 Sec. 11. Since an emergency exists, this act takes effect
3 when passed and approved according to law.

4 2. On page 1, strike beginning with the comma in line 1
5 through "2-2646" in line 2 and insert "and 2-2626"; and in line
6 3 after "Nebraska" insert ", and section 2-2646, Revised Statutes
7 Supplement, 2009".