

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 254

FINAL READING

Introduced by Dubas, 34; Rogert, 16.

Read first time January 14, 2009

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 2-2622
2 and 2-2626, Reissue Revised Statutes of Nebraska, and
3 section 2-2646, Revised Statutes Supplement, 2009; to
4 require Nebraska aerial pesticide business licenses for
5 aerial pesticide application; to harmonize provisions;
6 to provide an operative date; to repeal the original
7 sections; and to declare an emergency.
8 Be it enacted by the people of the State of Nebraska,

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

3 2-2622 Sections 2-2622 to 2-2654 and sections 2 to 6 of
4 this act shall be known and may be cited as the Pesticide Act.

5 Sec. 2. (1) A person shall not apply pesticides by use
6 of an aircraft or cause or arrange aerial pesticide spraying
7 operations to occur on the property of another unless such
8 person holds a Nebraska aerial pesticide business license for
9 the principal departure location of the aircraft to be used.
10 Any person applying pesticides without a principal departure
11 location licensed in this state and who applies pesticides by
12 use of an aircraft within this state may obtain a Nebraska aerial
13 pesticide business license for the principal out-of-state departure
14 location. An individual licensed as a commercial applicator shall
15 apply pesticides by use of an aircraft only under the direct
16 supervision of a person holding a Nebraska aerial pesticide
17 business license. Such supervising license holder is jointly
18 liable with the commercial applicator for any damages caused
19 by the commercial applicator. An individual who is licensed as
20 a commercial applicator with an aerial pest control category may
21 perform aerial operations without the supervision by a person
22 holding a Nebraska aerial pesticide business license if the
23 commercial aerial applicator acquires a Nebraska aerial pesticide
24 business license. For purposes of sections 2 to 6 of this act,
25 unless utilizing a licensed aerial pesticide business to perform

1 the application of pesticides by use of an aircraft, a person
2 causing or arranging aerial pesticide spraying operations shall
3 include a person performing billing and collection of payment for
4 aerial spraying services performed, employing or contracting with
5 pilots to perform aerial applications, assigning aerial spraying
6 work orders to pilots, or paying compensation to pilots for aerial
7 spraying services performed whether or not such person is licensed
8 as a commercial applicator.

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

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

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

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

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

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

22 (e) The Nebraska commercial applicator certificate number
23 and current Federal Aviation Administration commercial pilot
24 certificate number of all persons operating aircraft for the aerial
25 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

1 Act, whether committed by the license holder, the license holder's
2 agent, or the license holder's employee.

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

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

14 2-2626 The department shall have the following powers,
15 functions, and duties:

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

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

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

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

24 (i) The Department of Agriculture determines that the
25 pesticide, when used in accordance with its directions for use,

1 warnings, and cautions and for uses for which it is registered,
2 may without additional regulatory restrictions cause unreasonable
3 adverse effects on humans or the environment, including injury
4 to the applicator or other persons because of acute dermal or
5 inhalation toxicity of the pesticides;

6 (ii) The water quality standards set by the Department
7 of Environmental Quality or the Department of Health and Human
8 Services pursuant to this section are exceeded; or

9 (iii) The Department of Agriculture determines that the
10 pesticide requires additional restrictions to meet the requirements
11 of the Pesticide Act, the federal act, or any plan adopted under
12 the Pesticide Act or the federal act;

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

16 (i) With permission of the department;

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

19 (iii) In specified quantities and concentrations or at
20 specified times; or

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

23 (c) The Department of Agriculture may require a person
24 authorized to distribute or use a state-limited-use pesticide to
25 maintain records of the person's distribution or use and may

1 require that the records be kept separate from other business
2 records;

3 (d) The state management plan and pesticide management
4 plans shall be coordinated with the Department of Agriculture and
5 other state agency plans and with other state agencies and with
6 natural resources districts;

7 (e) The state management plan and pesticide management
8 plans may impose progressively more rigorous pesticide management
9 practices as pesticides are detected in ground water or surface
10 water at increasing fractions of the standards adopted by the
11 Department of Environmental Quality or the Department of Health and
12 Human Services; and

13 (f) A pesticide management plan may impose progressively
14 more rigorous pesticide management practices to address any
15 unreasonable adverse effect of pesticides on humans or the
16 environment. When appropriate, a pesticide management plan may
17 establish action levels for imposition of such progressively more
18 rigorous management practices based upon measurable indicators of
19 the adverse effect on humans or the environment;

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

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

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

3 (c) Labeling requirements of all pesticides required
4 to be registered under provisions of the act, except that
5 such regulations shall not impose any requirements for federally
6 registered labels contrary to those required pursuant to the
7 federal act;

8 (d) Classes of devices which shall be subject to the
9 Pesticide Act;

10 (e) Reporting and record-keeping requirements for persons
11 distributing or using pesticide products made available under
12 section 136p of the federal act and for persons required to keep
13 records under the Pesticide Act;

14 (f) Methods to be used in the application of pesticides
15 when the Department of Agriculture finds that such regulations are
16 necessary to carry out the purpose and intent of the Pesticide
17 Act. Such regulations may include methods to be used in the
18 application of a restricted-use pesticide, may relate to the time,
19 place, manner, methods, materials, amounts, and concentrations
20 in connection with the use of the pesticide, may restrict
21 or prohibit use of the pesticides in designated areas during
22 specified periods of time, and may provide specific examples and
23 technical interpretations of subdivision (4) of section 2-2646.
24 The regulations shall encompass all reasonable factors which the
25 department deems necessary to prevent damage or injury by drift or

1 misapplication to (i) plants, including forage plants, or adjacent
2 or nearby property, (ii) wildlife in the adjoining or nearby
3 areas, (iii) fish and other aquatic life in waters in reasonable
4 proximity to the area to be treated, (iv) surface water or ground
5 water, and (v) humans, animals, or beneficial insects. In adopting
6 and promulgating such regulations, the department shall give
7 consideration to pertinent research findings and recommendations
8 of other agencies of the state, the federal government, or other
9 reliable sources. The department may, by regulation, require that
10 notice of a proposed use of a pesticide be given to landowners
11 whose property is adjacent to the property to be treated or in the
12 immediate vicinity thereof if the department finds that such notice
13 is necessary to carry out the purpose of the act;

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

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

18 (i) Establishment of the components of any state
19 management plan or pesticide management plan;

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

23 (k) Establishment of a process for the issuance of
24 permits for emergency-use pesticides made available under section
25 136p of the federal act;

1 (5) To enter any public or private premises at any
2 reasonable time to:

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

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

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

10 (d) Observe the use and application of and sample any
11 pesticide;

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

15 (f) Inspect, examine, or take samples from any
16 application equipment, building, or place owned, controlled, or
17 operated by a registrant, licensed certified applicator, or dealer
18 any person engaging in an activity regulated by the act if,
19 from probable cause, it appears that the application equipment,
20 building, or place contains a pesticide;

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

23 (7) To issue and enforce a written or printed order to
24 stop the sale, removal, or use of a pesticide if the Department
25 of Agriculture has reason to believe that the pesticide is in

1 violation of any provision of the act. The department shall present
2 the order to the owner or custodian of the pesticide. The person
3 who receives the order shall not distribute, remove, or use the
4 pesticide until the department determines that the pesticide is in
5 compliance with the act. This subdivision shall not limit the right
6 of the department to proceed as authorized by any other provision
7 of the act;

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

12 (b) To request the county attorney or the Attorney
13 General to bring suit to enjoin a violation or threatened violation
14 of the act;

15 (9) To impose or levy an administrative fine of not
16 more than five thousand dollars on any person who has violated
17 the provisions, requirements, conditions, limitations, or duties
18 imposed by the act or rules and regulations adopted and promulgated
19 pursuant to the act. A violation means any separate activity or day
20 in which an activity takes place;

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

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

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

5 (13) To seize, for use as evidence, without formal
6 warrant if probable cause exists, any pesticide which is in
7 violation of the act or is not approved by the Department of
8 Agriculture or which is found to be used or distributed in the
9 violation of the act or the rules and regulations adopted and
10 promulgated under it;

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

15 (15) To adopt classifications of restricted-use
16 pesticides as determined by the federal agency under the federal
17 act. In addition to the restricted-use pesticides classified by
18 the administrator, the Department of Agriculture may also determine
19 state-limited-use pesticides for the state or for designated areas
20 within the state as provided in subdivision (3) of this section;

21 (16) To receive grants-in-aid from any federal entity,
22 and to enter into cooperative agreements with any federal entity,
23 any agency of this state, any subdivision of this state, any agency
24 of another state, any Indian tribe, or any private person for
25 the purpose of obtaining consistency with or assistance in the

1 implementation of the Pesticide Act. The Department of Agriculture
2 may reimburse any such entity from the Pesticide Administrative
3 Cash Fund for the work performed under the cooperative agreement.
4 The department may delegate its administrative responsibilities
5 under the act to cities of the metropolitan and primary classes
6 if it reasonably believes that such cities can perform the
7 responsibilities in a manner consistent with the act and the
8 rules and regulations adopted and promulgated under it;

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

12 (18) To request the assistance of the Attorney General
13 or the county attorney in the county in which a violation of the
14 Pesticide Act has occurred with the prosecution or enforcement of
15 any violation of the act;

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

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

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

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

25 (23) To make such reports to the federal agency as are

1 required under the federal act.

2 Sec. 8. Section 2-2646, Revised Statutes Supplement,
3 2009, is amended to read:

4 2-2646 It shall be unlawful for any person:

5 (1) To distribute within the state or deliver for
6 transportation or transport in intrastate commerce or between
7 points within this state through a point outside this state, any of
8 the following:

9 (a) A pesticide that has not been registered or whose
10 registration has been canceled or suspended under the Pesticide
11 Act;

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

15 (c) A pesticide that is not in the registrant's or
16 manufacturer's unbroken immediate container and that is not labeled
17 with the information and in the manner required by the act and any
18 regulations adopted under the act;

19 (d) A pesticide that is adulterated;

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

21 (f) A pesticide in a container that is unsafe due to
22 damage;

23 (g) A pesticide which differs from its composition as
24 registered; or

25 (h) A pesticide that has not been colored or discolored

1 as required by the Pesticide Act or the federal act;

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

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

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

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

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

24 (c) Employ any method of use not prohibited by the
25 labeling if (i) the labeling does not specifically state that the

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

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

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

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

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

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

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

25 (a) Likely to adversely affect or cause injury to

1 humans, the environment, vegetation, crops, livestock, wildlife,
2 or pollinating insects;

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

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

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

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

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

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

24 (12) To fail to keep or refuse to make available for
25 examination and copying by the department all books, papers,

1 records, and other information necessary for the enforcement of the
2 act;

3 (13) To hinder, obstruct, or refuse to assist the
4 director in the performance of his or her duties;

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

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

10 (16) To use any pesticide which is under an
11 experimental-use or emergency-use permit which is contrary to the
12 provisions of such permit;

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

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

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

25 (20) To alter or falsify all or part of a license issued

1 by the department; and

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

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

4 Sec. 10. Original sections 2-2622 and 2-2626, Reissue
5 Revised Statutes of Nebraska, and section 2-2646, Revised Statutes
6 Supplement, 2009, are repealed.

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