

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 100

Introduced by Carlson, 38.

Read first time January 09, 2009

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 2-2629,
2 2-2636, 2-2638, 2-2639, 2-2641, 2-2645, and 2-2646,
3 Reissue Revised Statutes of Nebraska; to change
4 provisions of the Pesticide Act; and to repeal the
5 original sections.

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

1 Section 1. Section 2-2629, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-2629 (1) The application for registration of a
4 pesticide shall include:

5 (a) The name and address of the applicant and the name
6 and address of the person whose name shall appear on the pesticide
7 label, if not the applicant's;

8 (b) The name of the pesticide;

9 (c) Two complete copies of all labeling to accompany
10 the pesticide and a statement of all claims to be made for it,
11 including the directions for use;

12 (d) The use classification, whether for restricted or
13 general use, as provided by the federal act;

14 (e) The use classification proposed by the applicant,
15 including whether the product is a specialty pesticide, if the
16 pesticide is not required by federal law to be registered under a
17 use classification;

18 (f) A designation of a resident agent for service of
19 process in actions taken in the administration and enforcement of
20 the Pesticide Act. In lieu of designating a resident agent, the
21 applicant may designate in writing the Secretary of State as the
22 recipient of service of process for the applicant in this state;
23 and

24 (g) Other information required by the department for
25 determining the eligibility for registration.

1 (2) Application information may be provided in electronic
2 format acceptable to the department.

3 (3) The department may require the applicant to submit
4 the complete formula for a pesticide, including active and inert
5 ingredients, as a prerequisite to registration.

6 (4) The department may require additional information
7 including a full description of the tests ~~made~~ conducted and
8 the results of the tests on which claims are based, either
9 before or after approving the ~~before~~ approving registration of
10 a pesticide. The department may request that additional tests
11 or field monitoring be conducted in Nebraska ecosystems, or
12 reasonably similar ecosystems, in order to determine the validity
13 of assumptions used to register pesticides under the federal act.
14 ~~that is not registered under the federal act or for which federal~~
15 ~~or state restrictions on use are being considered.~~

16 (5) Information collected under subsection (3) or (4) of
17 this section shall not be public records. The department shall
18 not reveal such information to other than representatives of the
19 department, the Attorney General or other legal representative of
20 the department when relevant in any judicial proceeding, or any
21 other officials of another Nebraska agency, the federal government,
22 or other states who are similarly prohibited from revealing this
23 information.

24 Sec. 2. Section 2-2636, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 2-2636 (1) The department shall license pesticide
2 applicators involved in the categories established in 40 C.F.R.
3 171, as the regulation existed on January 1, 2006, and any other
4 categories established pursuant to rules and regulations necessary
5 to meet the requirements of the state. The department may issue a
6 reciprocal license to a pesticide applicator licensed or certified
7 in another state or by a federal agency. Residents of the State
8 of Nebraska are not eligible for reciprocal certification. The
9 department may waive part or all of any license certification
10 examination requirements for a reciprocal license if the other
11 state or federal agency that licensed or certified the pesticide
12 applicator has substantially the same certification examination
13 standards and procedural requirements as required under the
14 Pesticide Act.

15 (2) A person shall not use a restricted-use pesticide
16 unless the person is:

17 (a) Licensed as a commercial or noncommercial applicator
18 and authorized by the license to use the restricted-use pesticide
19 in the category covering the proposed pesticide use;

20 (b) Licensed as a private applicator; or

21 (c) At least sixteen years of age and working under the
22 direct supervision of a licensed certified applicator pursuant to
23 subsection (5) of section 2-2642.

24 (3) A person shall not use lawn care or structural pest
25 control pesticides on the property of another person for hire or

1 compensation unless the person is:

2 (a) Licensed as a commercial applicator; or

3 (b) At least sixteen years of age and working under the
4 direct supervision of a licensed certified applicator pursuant to
5 subsection (5) of section 2-2642.

6 (4) An employee or other person acting on behalf of any
7 political subdivision of the state shall not use pesticides for
8 outdoor vector control unless the applicator is:

9 (a) Licensed as a commercial applicator or a
10 noncommercial applicator; or

11 (b) At least sixteen years of age and working under the
12 direct supervision of a licensed certified applicator pursuant to
13 subsection (5) of section 2-2642.

14 (5) In order to receive a commercial, noncommercial, or
15 private applicator license, a person shall be at least sixteen
16 years of age.

17 Sec. 3. Section 2-2638, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 2-2638 (1) An individual who uses restricted-use
20 pesticides on the property of another person in the State of
21 Nebraska for hire or compensation shall meet all certification
22 requirements of the Pesticide Act and shall be a commercial
23 applicator license holder of a license issued for the categories
24 and subcategories in which the pesticide use is to be made.

25 (2) Any person who uses lawn care or structural pest

1 control pesticides on the property of another person in the
2 State of Nebraska for hire or compensation shall be a commercial
3 applicator license holder, regardless of whether such person uses
4 any restricted-use pesticide.

5 (3) Application for an original or renewal commercial
6 applicator license shall be made to the department on forms
7 prescribed by the department. The application shall include
8 information as required by the director and be accompanied by a
9 license fee of ninety dollars. If the applicant is an individual,
10 the application shall include the applicant's social security
11 number and date of birth. The fee may be increased by the director
12 by rules and regulations adopted and promulgated pursuant to
13 the act. The fee shall not exceed one hundred fifty dollars
14 per license. All fees collected shall be remitted to the State
15 Treasurer for credit to the Natural Resources Water Quality Fund.

16 (4) The department may deny a commercial applicator
17 license if it has determined that:

18 (a) The applicant has had a license as a licensed
19 certified applicator issued by this state or another state revoked
20 within the last two years;

21 (b) The applicant has been unable to satisfactorily
22 fulfill certification or licensing requirements;

23 (c) The applicant for any other reason cannot be expected
24 to be able to fulfill the provisions of the Pesticide Act
25 applicable to the category for which application is made; or

1 (d) An applicant for an original commercial applicator
2 license has not passed an examination under sections 2-2637 and
3 2-2640.

4 (5) An individual to whom a commercial applicator license
5 is issued shall be a licensed certified applicator authorized to
6 use restricted-use pesticides in the categories and subcategories
7 in which the individual is licensed.

8 (6) As a condition to issuance of a commercial applicator
9 license, an applicant located outside this state shall file with
10 the department a written designation of a resident agent for
11 service of process in actions taken in the administration and
12 enforcement of the act. In lieu of designating a resident agent,
13 the applicant may designate in writing the Secretary of State as
14 the recipient of service of process for the applicant in this
15 state.

16 Sec. 4. Section 2-2639, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 2-2639 (1) A noncommercial applicator shall meet all
19 certification requirements of the Pesticide Act and shall be a
20 noncommercial applicator license holder of a license issued for the
21 categories and subcategories in which the pesticide use is to be
22 made.

23 (2) Application for an original or renewal noncommercial
24 applicator license shall be made to the department on forms
25 prescribed by the department. If the applicant is an individual,

1 the application shall include the applicant's social security
2 number and date of birth. The department shall not charge a
3 noncommercial applicant a license fee.

4 (3) The director shall not issue an original
5 noncommercial applicator license before the applicant has passed an
6 examination under sections 2-2637 and 2-2640.

7 (4) A person to whom a noncommercial applicator license
8 is issued shall be a licensed certified applicator authorized to
9 use restricted-use pesticides in the categories and subcategories
10 in which the individual is licensed.

11 (5) As a condition to issuance of a noncommercial
12 applicator license, an applicant located outside this state shall
13 file with the department a written designation of a resident agent
14 for service of process in actions taken in the administration and
15 enforcement of the Pesticide Act. In lieu of designating a resident
16 agent the applicant may designate the Secretary of State as the
17 recipient of service of process for the applicant in this state.

18 Sec. 5. Section 2-2641, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 2-2641 (1) A person shall be deemed to be a private
21 applicator if the person uses a restricted-use pesticide in the
22 State of Nebraska for the purpose of producing an agricultural
23 commodity:

24 (a) On property owned or rented by the person or person's
25 employer or under the person's general control; or

1 (b) On the property of another person if applied without
2 compensation other than the trading of personal services between
3 producers of agricultural commodities.

4 (2) An employee shall qualify as a private applicator
5 under subdivision (1)(a) of this section only if he or she provides
6 labor for the pesticide use but does not provide the necessary
7 equipment or pesticides.

8 (3) Every person applying for a license as a private
9 applicator shall meet the certification requirement of (a)
10 undertaking a training session approved by the department or
11 (b) passing an examination showing that the person is properly
12 qualified to perform functions associated with pesticide use to
13 a degree directly related to the nature of the activity and the
14 associated responsibility. The examination shall be approved by the
15 department and monitored by the department or its authorized agent.
16 If the applicant is an individual, the application shall include
17 the applicant's social security number and date of birth.

18 (4) Application for an original or renewal private
19 applicator license shall be made to the department and accompanied
20 by a license fee of twenty-five dollars. All fees collected shall
21 be remitted to the State Treasurer for credit to the Natural
22 Resources Water Quality Fund.

23 Sec. 6. Section 2-2645, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 2-2645 (1) A person claiming damages from a pesticide

1 use may file with the department a written report claiming that
2 the person has been damaged. The report shall be filed as soon as
3 possible following the day of the alleged occurrence.

4 (2) Except as otherwise provided in the Pesticide Act,
5 upon receipt of a report if the department has reasonable cause
6 to believe that a violation of the act has occurred, it shall
7 investigate such report to determine if any violation has occurred
8 and if any further enforcement action shall be taken under the
9 act. The department is not required to investigate any complaint
10 that the department determines is made more than ninety days after
11 the person complaining knew of the damages, is outside the scope
12 of the Pesticide Act, or is frivolous or minor. If a complaint is
13 investigated, the department shall notify the licensee, owner, or
14 lessee of the property on which the alleged act occurred and any
15 other person who may be charged with responsibility for the damages
16 claimed. The department shall furnish copies of the report to such
17 licensee, owner, lessee, or other person upon written request.

18 (3) The department shall inspect damages whenever
19 possible and shall report its findings to the person claiming
20 damage and to the person alleged to have caused the damage. The
21 claimant shall permit the department ~~and the licensee~~ to observe,
22 within reasonable hours, the property alleged to have been damaged.

23 (4) Failure to file a report shall not bar maintenance
24 of a civil or criminal action. If a person fails to file a report
25 or cooperate with the department and is the only person claiming

1 injury from the particular use of a pesticide, the department may,
2 if in the public interest, refuse to take action or hold a hearing
3 for the denial, suspension, or revocation of a license issued under
4 the act to the person alleged to have caused the damage.

5 Sec. 7. Section 2-2646, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 2-2646 It shall be unlawful for any person:

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

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

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

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

22 (d) A pesticide that is adulterated;

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

24 (f) A pesticide in a container that is unsafe due to
25 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

1 pests specified or recommended on the labeling;

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

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

14 (e) Use a pesticide in conformance with section 136c,
15 136p, or 136v of the federal act or section 2-2626; or

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

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

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

25 (7) To use, cause to be used, dispose, discard, or store

1 a pesticide or pesticide container in a manner that the person
2 knows or should know is:

3 (a) Likely to adversely affect or cause injury to
4 humans, the environment, vegetation, crops, livestock, wildlife,
5 or pollinating insects;

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

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

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

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

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

24 (11) To fail to pay all fees and penalties as prescribed
25 by the act and the rules and regulations adopted and promulgated

1 pursuant to the act;

2 (12) To fail to keep or refuse to make available for
3 examination and copying by the department all books, papers,
4 records, and other information necessary for the enforcement of the
5 act;

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

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

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

13 (16) To use any pesticide which is under an
14 experimental-use or emergency-use permit which is contrary to the
15 provisions of such permit;

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

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

25 (19) To knowingly falsify all or part of any application

1 for registration or licensing or any other records required to be
2 maintained pursuant to the Pesticide Act; and

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

5 ~~(20)~~ (21) To violate any other provision of the act.

6 Sec. 8. Original sections 2-2629, 2-2636, 2-2638, 2-2639,
7 2-2641, 2-2645, and 2-2646, Reissue Revised Statutes of Nebraska,
8 are repealed.