

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 592

Introduced by Carlson, 38.

Read first time January 19, 2011

Committee: Agriculture

A BILL

- 1 FOR AN ACT relating to agriculture; to adopt the Nebraska Commodity
- 2 Industry Development Act; and to provide a penalty.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known
2 and may be cited as the Nebraska Commodity Industry Development Act.

3 Sec. 2. For purposes of the Nebraska Commodity Industry
4 Development Act:

5 (1) Buyer means a person who buys or contracts to buy a
6 commodity;

7 (2) Commodity means any agricultural grain or livestock
8 product or byproduct;

9 (3) Director means the Director of Agriculture;

10 (4) Producer means any person who owns a commodity or who
11 otherwise shares in the profit or risk of loss in the growth and sale
12 of a commodity and has sold a commodity during the current or
13 preceding calendar year. Producer does not include a person whose
14 only share in the proceeds is a sales commission, handling fee, or
15 other service fee;

16 (5) Qualifying entity means a commodity promotion entity
17 organized and operating within Nebraska, formed exclusively for the
18 purpose of conducting commodity promotion, research, and consumer and
19 industry information to strengthen the commodity industry's position
20 in the marketplace and to maintain, develop, and expand markets for a
21 commodity and its products and is designated by the director pursuant
22 to section 4 of this act;

23 (6) Sale means a transaction resulting in the passing of
24 title from the seller to the buyer for a price; and

25 (7) Seller means a person who sells or contracts to sell

1 a commodity.

2 Sec. 3. (1) It is the public policy of the State of
3 Nebraska to protect and foster the health, prosperity, and general
4 welfare of its people by protecting and stabilizing any commodity
5 industry and the economy of the areas producing the commodity. The
6 Department of Agriculture shall be the agency of the State of
7 Nebraska for such purpose. In connection with, and in furtherance of
8 such purpose, the director shall have the authority to:

9 (a) Carry out an effective and coordinated program of
10 promotion, research, market development, and consumer and industry
11 information designed to strengthen the position of a commodity
12 industry in the marketplace and to maintain, develop, and expand
13 markets for the commodity and its products;

14 (b) Employ personnel and enter into such contracts as may
15 be necessary and appropriate in carrying out the purposes of the
16 Nebraska Commodity Industry Development Act;

17 (c) Receive fees collected pursuant to the act;

18 (d) Prepare and approve a budget consistent with the fees
19 and other funds received under the act;

20 (e) Authorize the expenditure of funds and contracting of
21 expenditures to conduct proper activities of the program; and

22 (f) Cooperate with local, state, and national
23 organizations, whether public or private, in carrying out the act.

24 (2) Fees and other funds collected pursuant to the act
25 may be expended for activities that promote the purposes of the act,

1 including expenditures for the following activities which are
2 specifically authorized:

3 (a) Paid advertising to advance the image and
4 desirability of a commodity and its production with the express
5 intent of improving the competitive position and stimulating sales of
6 a commodity and its products in the marketplace;

7 (b) Research relative to the effectiveness of market
8 development and promotion efforts, research relating to the
9 nutritional value of a commodity and its products, and research
10 relating to developing new uses for a commodity's products and
11 improved safety, convenience, and versatility in the use of a
12 commodity and its products by consumers;

13 (c) The compilation and publication of nutritional data
14 and other information that assists consumers and other persons in
15 making evaluations and decisions regarding the purchase, preparation,
16 and use of a commodity and its products;

17 (d) The development of information or programs that will
18 lead to the development of new markets, new marketing strategies,
19 increased efficiency, and activities to enhance the image of a
20 commodity industry with respect to the commodity and its products;

21 (e) Programs which provide factual information to
22 consumers and the public relating to a commodity and its product
23 production practices, including practices relating to environmental
24 compatibility, food safety, and husbandry issues; and

25 (f) Efforts to inform producers of activities conducted

1 with fees received under the act and to solicit information from
2 producers relating to the establishment of program priorities and
3 concerns.

4 (3) Fees and other funds collected pursuant to the act
5 are specifically prohibited from being expended for the following
6 purposes and activities:

7 (a) Directly or indirectly promote or oppose a candidate
8 for public office or to influence legislation;

9 (b) Programs which include deceptive acts or practices
10 with respect to the quality, value, or use of any competing product;

11 (c) Projects which include brand names or trade names of
12 the commodity or its products unless the director specifically
13 approves such expenditure; and

14 (d) Sponsorship of contests, shows, sales, scholarships,
15 awards, or other related activities which are not directly related to
16 the marketing of the commodity or its products.

17 Sec. 4. It is the intent of the Legislature that the
18 Nebraska Commodity Industry Development Act does not by its enactment
19 require the establishment of new programs of market development but
20 merely provides a process available to producers of the various
21 agricultural commodities to establish such market development
22 programs. It is further the intent of the Legislature that the
23 Nebraska Commodity Industry Development Act shall not be available as
24 a means of establishing market development programs for any commodity
25 for which a fee, excise tax, or other assessment to fund promotional

1 activities is imposed pursuant to the Nebraska Wheat Resources Act,
2 the Nebraska Corn Resources Act, the Grain Sorghum Resources Act, the
3 Dairy Industry Development Act, the Nebraska Potato Development Act,
4 the Nebraska Poultry and Egg Resources Act, the Dry Bean Resources
5 Act, or section 53-304.

6 Sec. 5. Unless otherwise designated by statute, the
7 director shall designate and contract with a qualified entity to
8 develop, implement, and direct a Nebraska commodity industry
9 development program authorized by, and consistent with, the purposes
10 of the act. The director shall enter into only one contract for a
11 commodity. The contract shall be for a term of five years. Any
12 contract entered into with the qualifying entity for such purposes
13 shall provide for the faithful performance of the director's duties
14 under sections 3 and 6 to 8 of this act and shall provide that the
15 qualifying entity shall:

16 (1) Annually prepare and submit to the director for
17 approval a budget of anticipated revenue and expenditures on a
18 fiscal-year basis, including the qualifying entity's anticipated
19 expenses in the administration of the Nebraska commodity industry
20 development program;

21 (2) Maintain books and records that will be available at
22 all times to the director for inspection and audit and prepare and
23 submit reports from time to time to the director as the director may
24 prescribe;

25 (3) Prepare and make public, at least annually, a report

1 of activities carried out and an accounting of fees and other funds
2 received that at a minimum satisfies the requirements of section 6 of
3 this act;

4 (4) Cause its books to be audited by an independent
5 certified public accountant at least once each fiscal year and at
6 such other times as the director may request and submit a copy of
7 each such audit to the director;

8 (5) Give the director notice of meetings of the board of
9 directors of the qualifying entity in order that the director or his
10 or her representative may attend such meetings;

11 (6) Be organized as a private, nonprofit corporation and
12 have articles of incorporation and bylaws which include provisions
13 providing for the nomination and election of members of the board of
14 directors by district by producers who reside in such district;

15 (7) Assure that any duties delegated pursuant to this
16 section are carried out in accordance with the purposes of the act;

17 (8) Include in its bylaws provisions which are
18 substantially equivalent to the Open Meetings Act as determined and
19 approved by the director; and

20 (9) Cooperate with the director in submitting to
21 performance audits of the Nebraska commodity development program
22 authorized by the act and conducted by the state.

23 Sec. 6. The director shall adopt and promulgate such
24 rules and regulations as are necessary to:

25 (1) Provide for the efficient collection and

1 administration of fees imposed pursuant to the Nebraska Commodity
2 Industry Development Act;

3 (2) Make refunds for overpayments of fees or refunds
4 applied for by a producer; and

5 (3) Carry out the purposes of the act.

6 Sec. 7. An annual report shall be prepared on or before
7 January 1 of each year that sets forth the income received from fees
8 collected under section 6 of this act for the previous fiscal year,
9 beginning July 1 and ending June 30, and shall include:

10 (1) The expenditure of funds during the previous fiscal
11 year for the administration of the Nebraska Commodity Industry
12 Development Act;

13 (2) A brief description of all contracts requiring the
14 expenditure of funds and the action taken on all such contracts;

15 (3) An explanation of all programs relating to the
16 discovery, promotion, and development of markets and industries for
17 the utilization of the commodity and the direct expense associated
18 with each Nebraska commodity industry development program;

19 (4) The name and address of each member of a qualifying
20 entity, if applicable; and

21 (5) A brief description of the rules, regulations, and
22 policies pertaining to the collection, expenditure, and use of fees
23 and other funds collected pursuant to the act and any changes in such
24 rules, regulations, and policies that have been promulgated during
25 the period covered by the report. The report shall be available to

1 the public upon request.

2 Sec. 8. The director shall establish a fund for each
3 Nebraska commodity industry program contracted for under section 4 of
4 this act. All fees, remittances, credits, grants, contributions, or
5 any other money paid to and collected pursuant to the act shall be
6 remitted to the State Treasurer for credit to the appropriate fund.
7 Such funds shall be expended for the administration of and for
8 purposes authorized by the Nebraska Commodity Industry Development
9 Act. The director may expend funds to a qualifying entity pursuant to
10 section 4 of this act. Any money in a fund available for investment
11 shall be invested by the state investment officer pursuant to the
12 Nebraska Capital Expansion Act and the Nebraska State Funds
13 Investment Act.

14 Sec. 9. Neither a qualifying entity nor the director
15 shall establish research units or agencies for purposes of the
16 Nebraska Commodity Industry Development Act, but shall cooperate and
17 contract with the Institute of Agriculture and Natural Resources of
18 the University of Nebraska and other proper local, state, or national
19 organizations, public or private, to carry out the purposes of the
20 act.

21 Sec. 10. Any person violating the Nebraska Commodity
22 Industry Development Act is guilty of a Class IV misdemeanor.