

LEGISLATIVE BILL 120

Approved by the Governor May 23, 1979

Introduced by DeCamp, 40

AN ACT to adopt the Nebraska Litter Reduction and Recycling Act; to define terms; to provide duties; to provide for the expiration of the act; to create a fund; to amend section 28-523, Revised Statutes Supplement, 1978; to redefine the offense of littering; to change a penalty; to provide an operative date; to provide severability; and to repeal the original section.

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

Section 1. Sections 1 to 33 of this act shall be known and may be cited as the Nebraska Litter Reduction and Recycling Act.

Sec. 2. The Legislature declares that the protection of the public health, safety, and well-being, the maintenance of the economic productivity and environmental quality of the state, and the conservation of natural resources require the implementation of a comprehensive litter and recycling program throughout the state and the rapid development of technologically and economically feasible operational projects for the recovery of energy and resources.

Sec. 3. For purposes of sections 1 to 33 of this act, unless the context otherwise requires, the definitions found in sections 4 to 15 of this act shall be used.

Sec. 4. Department shall mean the Department of Environmental Control.

Sec. 5. Council shall mean the Environmental Control Council.

Sec. 6. Fund shall mean the Litter Reduction and Recycling Fund.

Sec. 7. Director shall mean the Director of Environmental Control.

Sec. 8. Litter shall mean all waste material susceptible to being dropped, deposited, discarded, or otherwise disposed of upon any property in the state, but not including the waste or primary processes of farming or manufacturing.

Sec. 9. Manufacturer shall mean any person engaged in a business activity, in the state, of selling tangible personal property which the person has made, produced, manufactured, processed, or fabricated. The selling of meals, food products, or drinks at retail to a consumer on his or her order and for his or her immediate consumption shall not classify the seller as a manufacturer by reason of such activity.

Sec. 10. Person shall mean any natural person, political subdivision, government agency, public or private corporation, partnership, joint venture, association, firm, or individual proprietorship.

Sec. 11. Public place shall mean any place or area in the state that is used or held out for use by the public, whether owned or operated by public or private interests.

Sec. 12. Recycling shall mean the process of separating, cleaning, treating, and reconstituting waste or other discarded materials for the purpose of recovering and reusing the resources contained therein.

Sec. 13. Recycling center shall mean a central collection point in a community for recyclable materials.

Sec. 14. Resource recovery shall mean a system or process for the recovery of materials or energy from waste material.

Sec. 15. Source separation shall mean separation by the public from their general refuse of recyclable material.

Sec. 16. In addition to other powers and duties, the council shall have the power to propose and to adopt rules and regulations necessary to carry out the provisions, purposes, and intent of sections 1 to 33 of this act.

Sec. 17. Litter prone activities and areas shall be required to have appropriate litter receptacles meeting minimum standards established by the department. The council shall, by regulation, determine what are litter prone activities and areas.

Sec. 18. It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles are required by section 17 of this act to procure and place such receptacles at his or her own expense on the premises, and to maintain the same in accord with rules and regulations adopted by

the council. Any person who fails to place such litter receptacles on the premises in the numbers required shall be guilty of a Class V misdemeanor.

Sec. 19. (1) No person shall damage, deface, abuse, or misuse any litter receptacle not owned by him or her so as to interfere with its proper function or to detract from its proper appearance.

(2) No person shall deposit leaves, clippings, prunings, garden refuse, or household waste materials in any litter receptacle, except with the permission of the owner of such receptacle.

Sec. 20. (1) In order to identify the litter problem more fully and to measure the progress made by the department, within six months of the effective date of this act, the department shall conduct, or grant funds to enable public or private agencies to conduct, a survey measuring the amount and composition of litter on the public highways, recreation lands, and urban areas in the state. The department shall conduct, or grant funds to enable public or private agencies to conduct, follow-up surveys on a sufficiently regular basis to provide meaningful measurement of the amount and composition of litter and the rate of littering. The results of these surveys shall be reported to the Governor. The department shall not spend more than fifty thousand dollars from the fund to conduct the original survey required by this section.

(2) The department shall submit an annual progress report, relating to the purpose of sections 1 to 33 of this act, to the Governor and the Appropriations Committee of the Legislature.

Sec. 21. In order to provide employment and to establish litter free areas, the department may design programs and grant funds for the use of unemployed persons on a seasonal and part-time basis. In designing such programs, the department shall cooperate and coordinate with federal, other governmental, and private programs aimed at providing jobs for the unemployed.

Sec. 22. The department shall work toward establishing effective local ordinances and resolutions relating to littering laws.

Sec. 23. The director may designate trained employees of the department to enforce and administer sections 1 to 33 of this act and all rules and regulations adopted pursuant to such sections. The director may contract with other state and local

governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of sections 1 to 33 of this act. All peace officers of this state or any political subdivision of this state shall enforce the provisions of sections 1 to 33 of this act and all rules and regulations adopted pursuant to such sections and are empowered to issue citations to any person violating any provision of sections 1 to 33 of this act in their presence.

Sec. 24. The penalties which may be imposed for littering in this state and any provisions of sections 1 to 33 of this act deemed appropriate by the department shall be posted along public highways of this state, at visitor centers, at the entrance to state parks and recreation areas, at public beaches, and at such other public places as the department determines is necessary to accomplish the purposes of sections 1 to 33 of this act.

Sec. 25. There is hereby created within the state treasury a fund to be known as the Nebraska Litter Reduction and Recycling Fund. The proceeds of the fee imposed by sections 26 and 27 of this act shall be transmitted to the State Treasurer for deposit in such fund to be used for the administration and enforcement of sections 1 to 33 of this act.

Sec. 26. (1) To aid in defraying the cost of administration of sections 1 to 33 of this act, there shall be collected an annual litter fee equal to one hundred fifty dollars for each one million dollars of gross proceeds of products manufactured and the sales of which are consummated within this state, including by-products, in the case of manufacturers, and equal to one hundred fifty dollars for each one million dollars of the gross proceeds of the sales consummated within this state in the case of such sales at wholesale. Such fee shall be collected and administered by the Department of Revenue. The fee imposed by this section shall be due on or before January 15, 1980, based upon the gross proceeds of products manufactured or sales consummated within the state for the period from October 1, 1979 to December 31, 1979, on or before August 1, 1980, for products manufactured or sales consummated for the period from January 1, 1980, to June 30, 1980, and on or before October 1, 1981, and on or before October 1, each year thereafter, based upon the gross proceeds for the immediately preceding July 1 to June 30 period. The pertinent provisions, specifically including penalty provisions, of sections 77-2705 to 77-2710, 77-2712, 77-27,125 to 77-27,131, and 77-27,133 to 77-27,135,

Reissue Revised Statutes of Nebraska, 1943, and sections 77-2711 and 77-2713, Revised Statutes Supplement, 1978, shall be applicable to the administration and collection of the fee imposed by this section.

(2) After October 1, 1979, no manufacturer or wholesaler in the state shall produce or sell any product pursuant to this section and section 27 of this act without having first obtained a license issued in the same manner as permits issued pursuant to section 77-2705. Any manufacturer or wholesaler who fails to pay the fee imposed pursuant to subsection (1) of this section may have such license revoked in the same manner as permits are revoked pursuant to section 77-2705.

Sec. 27. The fee imposed by section 26 of this act shall be calculated only on the value of products or the gross proceeds of sales of products falling into the following categories: (1) Food for human or pet consumption; (2) groceries; (3) cigarettes and other tobacco products; (4) soft drinks and carbonated waters; (5) liquor, wine, and beer and other malt beverages; (6) household paper and paper products, excluding magazines, periodicals, newspapers, and literary works; (7) glass containers; (8) metal containers; (9) plastic or fiber containers made of synthetic material; and (10) cleaning agents and toiletries.

Sec. 28. The department shall allocate and distribute funds in percentage amounts to be determined by the council on an annual basis, after a public hearing on a date to be determined by the council, from the fund for the following activities:

(1) Programs of public education, motivation, and participation, aimed at creating an ethic conducive to the reduction of litter, establishing an attitude against littering and a desire for a clean environment, and securing greater awareness of and compliance with antilitter laws. Such programs shall include:

(a) The distribution of informative materials to elementary and secondary schools;

(b) The purchase and erection of roadside signs;

(c) The organization and operation of cleanup drives conducted by local agencies and organizations using volunteer help;

(d) Grants to state and local government units and agencies and private organizations for developing and conducting antilitter programs; and

(e) Any other public information method selected by the department, including the use of media;

(2) Cleanup of public highways, waterways, recreation lands, urban areas, and public places within the state, including but not limited to the following:

(a) Grants to cities and counties for payment of personnel employed in the pickup of litter;

(b) Grants for programs aimed at increasing the use of youth and unemployed persons in seasonal and part-time litter pickup programs and to establish work release and other programs to carry out the purposes of sections 1 to 33 of this act;

(c) Grants to public and private agencies and persons to conduct surveys of amounts and composition of litter and rates of littering; and

(d) Grants to public and private agencies and persons for research and development in the fields of litter reduction, removal, and disposal, including the evaluation of behavioral science techniques in litter control and the development of new equipment, and to implement such research and development when appropriate; and

(3) New or improved community recycling and source separation programs, including but not limited to:

(a) Expansion of existing and creation of new community recycling centers;

(b) Expansion of existing and creation of new source separation programs;

(c) Research and evaluation of markets for the materials and products recovered in source separation and recycling programs; and

(d) Providing advice and assistance on matters relating to recycling and source separation including information and consultation on available technology, operating procedures, organizational arrangements, markets for materials and products recovered in recycling and source separation, transportation alternatives, and publicity techniques.

Sec. 29. All grants under section 28 of this act shall be made on an annual basis. A separate application shall be required for each grant sought.

Sec. 30. The department shall require periodic reports to be filed by grant recipients to enable the department to review and follow up on actions taken by grant recipients to insure that the purposes of sections 1 to 33 of this act are being achieved.

Sec. 31. Grant recipients shall use funds only to supplement and not to replace existing programs or expenditures.

Sec. 32. The department shall adopt guidelines for the determination of eligibility of public and private agencies and persons to receive funds pursuant to sections 1 to 33 of this act and the determination of qualification and suitability of plans submitted by such agencies and persons consistent with the purposes of sections 1 to 33 of this act.

Sec. 33. Sections 1 to 33 of this act shall terminate five years from its effective date unless extended by the Legislature. In order to determine whether such extension shall occur, the department shall review and evaluate the extent to which the purposes of sections 1 to 33 of this act have been and are being achieved, and the need for continuation of the program and requirements established by sections 1 to 33 of this act. Such review and evaluation shall be completed at least six months prior to the date established by this section for termination of sections 1 to 33 of this act.

Sec. 34. That section 28-523, Revised Statutes Supplement, 1978, be amended to read as follows:

28-523. (1) Any person who deposits, throws, discards, or leaves otherwise disposes of any litter on any public or private property, or in any waters, commits the offense of littering unless:

(a) Such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property; or

(b) The litter is placed in a receptacle or container installed on such property for such purpose.

(2) The word litter as used in this section means all rubbish, refuse, waste material, garbage, trash, debris, or other foreign substances, solid or liquid, of every form, size, kind and description, but does not include the waste or primary processes of farming or manufacturing.

(3) Whenever litter is thrown, deposited, dropped, or dumped from any motor vehicle or watercraft in violation of this section, the operator of such motor vehicle or watercraft ~~is presumed to have caused or permitted such litter to have been so thrown, deposited, dropped, or dumped therefrom~~ commits the offense of littering.

(4) Littering is a Class ~~V~~ IV misdemeanor.

Sec. 35. This act shall become operative on October 1, 1979.

Sec. 36. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 37. That original section 28-523, Revised Statutes Supplement, 1978, is repealed.