

LEGISLATIVE BILL 203

Approved by the Governor June 10, 1993

Introduced by Horgan, 4; Ashford, 6; Bernard-Stevens, 42;
 Cudaback, 36; Rasmussen, 20; Robinson, 16;
 Wehrbein, 2; Chambers, 11; Hartnett, 45

AN ACT relating to litter and waste; to amend sections 81-1534, 81-1536, 81-1542, 81-1548.01, 81-1548.02, 81-1549, 81-1553, 81-1556 to 81-1559, 81-1560.01 to 81-1561, 81-1563, and 81-1565, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1504.01, 81-15,160, 81-15,163, 81-15,164, and 81-15,165, Revised Statutes Supplement, 1992; to require a report; to redefine terms; to transfer certain funds; to change and eliminate fees; to change the categories of items on which litter fees are imposed and for the collection of certain fees; to provide for litter tax to be paid on a percentage of sales in certain types of businesses as prescribed; to harmonize provisions; to provide operative dates; to repeal the original sections, and also section 81-15,163, Revised Statutes Supplement, 1992, as amended by section 21, Legislative Bill 203, Ninety-third Legislature, First Session, 1993; and to declare an emergency.

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

Section 1. That section 81-1504.01, Revised Statutes Supplement, 1992, be amended to read as follows:

81-1504.01. The Department of Environmental ~~Control~~ Quality shall provide the following information to the Clerk of the Legislature by December 1 of each year:

(1) A report by type of service or aid provided by the use and distribution of federal funds received by the department. The report shall also include user fees, permit fees, license fees, and application fees authorized by the federal Environmental Protection Agency as follows:

(a) Actual expenditure of each grant or authorized fees for the most recently completed state fiscal year, including state matching funds;

(b) Current budget and planned use and distribution of each grant and authorized fees for the current state fiscal year, including state matching funds;

(c) A summary of the projected funding level of each grant and authorized fees and the impact of federal mandates and regulations upon the future use of each grant and authorized fees; and

(d) Program summaries including statistical summaries when applicable for the most recently completed state fiscal year and program activity goals for the current state fiscal year;

(2) A summary of regulations of the federal Environmental Protection Agency which the department is required to implement and which do not include federal funding assistance and the possible financial impact to the state and political subdivisions;

(3) A report by type of service or aid provided by the use and distribution of state general and cash funds, including user fees, permit fees, license fees, and application fees, to carry out activities that are not funded by federal grants as follows:

(a) Actual expenditure of state funds, by agency sections, for the most recently completed state fiscal year, including a breakdown of expenditures by personal services, operations, travel, capital outlay, and consulting and contractual services;

(b) Current budget and planned use and distribution of state funds, by agency sections, for the current state fiscal year, including a breakdown of expenditures by personal services, operations, travel, capital outlay, and consulting and contractual services;

(c) A summary of projected program funding needs based upon the statutory requirements and public demand for services and the department's assessment of anticipated needs statewide; and

(d) Program summaries including statistical summaries when applicable for the most recently completed state fiscal year and program activity goals for the current state fiscal year;

(4) A report regarding staff turnover by job class and the department's assessment of its ability to hire and retain qualified staff considering the state's personnel pay plan; ~~and~~

(5) A report listing the method used by each new or existing licensee, permittee, or other person who is required by the department to establish proof of financial responsibility; and

(6) A report of funds credited to the Nebraska Litter Reduction and Recycling Fund under the Nebraska Litter Reduction and Recycling Act.

Sec. 2. That section 81-1534, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1534. Sections 81-1534 to 81-1566 and section 16 of this act shall be known and may be cited as the Nebraska Litter Reduction and Recycling Act.

Sec. 3. That section 81-1536, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1536. For purposes of ~~sections 81-1534 to 81-1566~~ the Nebraska Litter Reduction and Recycling Act, unless the context otherwise requires, the definitions found in sections 81-1537 to 81-1548.04 shall be used.

Sec. 4. That section 81-1542, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1542. Manufacturer shall mean any person engaged in a business activity ~~in the state~~; who has annual gross proceeds in this state of at least ~~three hundred fifty~~ one hundred thousand dollars resulting from the sale of tangible personal property which the person has

made, produced, manufactured, processed, or fabricated which is within any of the categories listed in section 81-1560.

Sec. 5. That section 81-1548.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1548.01. Wholesaler shall mean any person engaged in business ~~in this state~~ who has annual gross proceeds in this state of at least ~~three hundred fifty~~ one hundred thousand dollars resulting from sales at the wholesale level to retailers, other merchants, or industrial, institutional, and commercial users of any tangible personal property falling into any of the categories listed in section 81-1560 which is sold at the wholesale level.

Sec. 6. That section 81-1548.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1548.02. Retailer shall mean any person engaged in business ~~in this state~~ who has annual gross proceeds in this state of at least ~~three hundred fifty~~ one hundred thousand dollars resulting from the sales of tangible personal property for storage, use, or other consumption or from the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption; of any of the products, including byproducts, falling into the categories listed in section 81-1560.02.

Sec. 7. That section 81-1549, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1549. In addition to other powers and duties, the council shall have the power to propose and to adopt and promulgate rules and regulations necessary to carry out the provisions, purposes, and intent of ~~sections 81-1534 to 81-1566~~ the Nebraska Litter Reduction and Recycling Act.

Sec. 8. That section 81-1553, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1553. (1) In order to identify the litter problem more fully and to measure the progress made by the department, within twelve months of October 1, 1979, 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, followup 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, by February 15 of each year, an annual progress report for the previous year; relating to the purpose of ~~sections 81-1534 to 81-1566~~; the Nebraska Litter Reduction and Recycling Act to the Governor and the Appropriations Committee of the Legislature.

Sec. 9. That section 81-1556, Reissue Revised Statutes of

Nebraska, 1943, be amended to read as follows:

81-1556. The director may designate trained employees of the department to enforce and administer ~~sections 81-1534 to 81-1566~~ the Nebraska Litter Reduction and Recycling Act and all rules and regulations adopted pursuant to ~~such sections~~ the act. 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 81-1534 to 81-1566~~ the act. All peace officers of this state or any political subdivision of this state shall enforce the provisions of ~~sections 81-1534 to 81-1566~~ the act and all rules and regulations adopted pursuant to ~~such sections~~ the act and are empowered to issue citations to any person violating any provision of ~~sections 81-1534 to 81-1566~~ the act in their presence.

Sec. 10. That section 81-1557, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1557. The penalties which may be imposed for littering in this state and any provisions of ~~sections 81-1534 to 81-1566~~ the Nebraska Litter Reduction and Recycling 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 81-1534 to 81-1566~~ the act.

Sec. 11. That section 81-1558, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1558. 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 81-1559 to 81-1560.02, ~~and~~ money received by the department as gifts, donations, or contributions toward the goals stated in section 81-1535, ~~as well as~~ and money received by the department for nonprofit activities concerning litter reduction and recycling, including, but not limited to, honoraria, literature furnished by the department, and funds realized as reimbursement for expenses in conducting educational forums, shall be ~~transmitted~~ remitted to the State Treasurer for ~~deposit in credit to~~ such fund to be used for the administration and enforcement of ~~sections 81-1534 to 81-1566~~ the Nebraska Litter Reduction and Recycling Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276. On or before December 1, 1994, and each year thereafter, the director shall direct the State Treasurer to transfer all amounts remitted to the department pursuant to section 81-1561, raised in the previous fiscal year from the act, which are in excess of eight hundred thousand dollars to the Waste Reduction and Recycling Incentive Fund. If such transfer occurs, the Waste Reduction and Recycling Incentive Fund shall consist of such transfers in addition to amounts credited pursuant to section 81-15.160.

Sec. 12. That section 81-1559, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1559. (1) To aid in defraying the cost of administration of ~~sections 81-1534 to 81-1566~~ the Nebraska Litter Reduction and Recycling Act and the Waste Reduction and Recycling Incentive Fund, there shall be collected an annual litter fee equal to one hundred ~~forty~~ seventy-five dollars for each one million dollars of gross proceeds of products manufactured and the sales of which are consummated within this state, including byproducts, in the case of manufacturers and equal to one hundred ~~forty~~ seventy-five dollars for each one million dollars of the gross proceeds of the sales consummated within this state in the case of wholesalers. The litter fee provided by this section shall not be applied to gross proceeds of the sales of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom if the person performs only the growing or raising function of such animal, bird, or insect. Such fee shall be collected and administered by the Department of Revenue. The fee imposed by this section shall be due on or before October 1 each year, based upon the gross proceeds for the immediately preceding July 1 to June 30 period. ~~The pertinent provisions, specifically including collection and penalty provisions; of sections 77-2705 to 77-2711, 77-2713, 77-27125 to 77-27131, and 77-27133 to 77-27135~~ the Nebraska Revenue Act of 1967 shall be applicable to the administration and collection of the fee imposed by this section.

(2) ~~After October 1, 1979, no~~ No manufacturer or wholesaler in the state shall produce or sell any product which falls within the categories enumerated in this section and section 81-1560 without having first obtained a license issued in the same manner as permits issued pursuant to section 77-2705. Failure to obtain such license shall be a Class IV misdemeanor. Except as provided in section 81-1560.03, 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. 13. That section 81-1560.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1560.01. (1) There is hereby imposed; on every person engaged in business within this state as a retailer selling products which fall within the categories enumerated in section 81-1560.02; an annual litter fee equal to one hundred ~~forty~~ seventy-five dollars for each one million dollars of gross proceeds of the sales which are consummated within this state except as provided in ~~section 81-1560.03~~ sections 81-1560.02 and 81-1560.03 and section 16 of this act. The litter fee provided by this section shall not be applied to gross proceeds of the sales of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, if the person performs only the growing or raising function of such animal, bird, or insect. Such annual litter 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, 1982, based upon the gross proceeds of products manufactured or sales consummated within the state for the period from October 1, 1981, to December 31, 1981, on or before August 1, 1982, for~~

~~products manufactured or sales consummated for the period from January 1, 1982, to June 30, 1982, and on or before October 1, 1983, and on or before October 1, each year thereafter,~~ based upon the gross proceeds for the immediately preceding July 1 to June 30 period.

(2) ~~After October 1, 1981, no~~ No retailer in this state shall sell any product which falls within the categories enumerated in section 81-1560.02; without having first obtained a license issued in the same manner as permits issued pursuant to section 77-2705. Failure to obtain such license shall be a Class IV misdemeanor. Except as provided in section sections 81-1560.02 and 81-1560.03 and section 16 of this act, any retailer 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. 14. That section 81-1560.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1560.02. The fee imposed by section 81-1560.01 shall be calculated only on the gross proceeds of sales of products falling into the following categories:

(1) Food for human consumption, beverages, soft drinks, carbonated water, liquor, wine, beer, and other malt beverages, unless sold by retailers solely for consumption indoors on the retailer's premises;

(2) Food for pet consumption;

(3) Cigarettes and other tobacco products;

(4) Household paper and household paper products;

(5) Cleaning agents; and

(6) Kitchen supplies. ~~(1) Food, beverages, liquor, wine, and beer and other malt beverages, except those sold by retailers which are solely for consumption indoors on the seller's premises; and (2) groceries;~~

Sec. 15. That section 81-1560.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1560.03. Any person engaged in business as both a manufacturer and a retailer or as both a wholesaler and a retailer shall pay the fee either under section 81-1559 or 81-1560.01, whichever is greater. No person shall be required to pay a fee more than once on the same item or product under ~~sections 81-1534 to 81-1566~~ the Nebraska Litter Reduction and Recycling Act.

Sec. 16. In lieu of requiring each license holder to separately account for taxable and nontaxable sales under sections 81-1560.01 and 81-1560.02, the Tax Commissioner shall provide by rule and regulation that the tax imposed under section 81-1560.01 may be reported and paid based on a percentage of the sales for a particular type of business if the Tax Commissioner determines that the percentage reasonably approximates the taxable activity of the particular type of business.

Sec. 17. That section 81-1561, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1561. The Tax Commissioner shall deduct and

withhold from the litter fee collected a fee sufficient to reimburse himself or herself for the cost of collecting and administering the litter fee and shall deposit such collection fee in the Litter Fee Collection Fund which is hereby created. The Litter Fee Collection Fund shall be appropriated to the Department of Revenue. Any money in the ~~fund~~ Litter Fee Collection Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to ~~72-1269~~ 72-1276.

The Tax Commissioner shall remit the balance of the litter fee collections to the Department of Environmental ~~Control~~ Quality. The department shall allocate and distribute funds ~~from the Nebraska Litter Reduction and Recycling Fund~~ 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:

(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 81-1534 to 81-1566~~ the Nebraska Litter Reduction and Recycling 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. 18. That section 81-1563, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1563. 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 81-1534 to 81-1566~~ the Nebraska Litter Reduction and Recycling Act are being achieved.

Sec. 19. That section 81-1565, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1565. The department shall adopt guidelines for the determination of eligibility of public and private agencies and persons to receive funds pursuant to ~~sections 81-1534 to 81-1566~~ the Nebraska Litter Reduction and Recycling Act and the determination of qualification and suitability of plans submitted by such agencies and persons consistent with the purposes of ~~sections 81-1534 to 81-1566~~ the act.

Sec. 20. That section 81-15,160, Revised Statutes Supplement, 1992, be amended to read as follows:

81-15,160. (1) There is hereby created a Waste Reduction and Recycling Incentive Fund to be administered by the Department of Environmental Quality. The fund shall consist of ~~revenue from the following sources:~~

(a) ~~Proceeds~~ proceeds from the fee imposed on each new tire sold in the state and the fee imposed on each tire of each new motor vehicle sold in the state pursuant to section 81-15,162, ~~and~~

(b) ~~Proceeds from the annual fee imposed on businesses pursuant to section 81-15,163.~~

(2) The fund may be used for ~~the following~~ purposes; ~~including~~ which include, but are not limited to:

(a) Technical and financial assistance to political subdivisions for creation of recycling systems and for modification of present recycling systems;

(b) Recycling and waste reduction projects, including public education, planning, and technical assistance;

(c) Market development for recyclable materials separated by generators, including public education, planning, and technical

assistance;

(d) Capital assistance for establishing private and public intermediate processing facilities for recyclable materials and facilities using recyclable materials in new products;

(e) Programs which develop and implement composting of yard waste and composting with sewage sludge;

(f) Technical assistance for waste reduction and waste exchange for waste generators;

(g) Programs to assist communities and counties to develop and implement household hazardous waste management programs;

(h) Incentive grants to political subdivisions to assist and encourage the closure of landfills operating without a permit, the regional consolidation of solid waste disposal facilities operating with a permit, and the use of transfer stations. Grants awarded for programs involving land disposal shall include provisions for waste reduction and recycling; and

(i) Capital assistance for establishing private and public facilities to manufacture combustible waste products and to incinerate waste to generate and recover energy resources.

(3) No grant shall be made under section 81-15,161 to a political subdivision which operates a landfill operating without a permit unless the grant will be used to meet permit standards and the landfill is issued a permit within two years after the award of the grant.

(4) The Department of Environmental Quality may receive gifts, bequests, and any other contributions for deposit in the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 21. That section 81-15,163, Revised Statutes Supplement, 1992, be amended to read as follows:

81-15,163. ~~Commencing July 1, 1991, there~~ There is hereby imposed an annual waste reduction and recycling fee of twenty-five dollars on all businesses engaged in business in this state ~~as follows: Businesses with retail sales of tangible personal property of thirty thousand dollars or more, which sales are subject to the tax imposed by the Nebraska Revenue Act of 1967, of at least thirty thousand dollars and not more than one hundred ninety nine thousand dollars, twenty five dollars; and businesses with retail sales of tangible personal property subject to such tax of more than one hundred ninety nine thousand dollars, fifty dollars.~~ Subject to section 81-15,165, the fee shall be collected by the Department of Revenue and remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund.

Sec. 22. That section 81-15,164, Revised Statutes Supplement, 1992, be amended to read as follows:

81-15,164. ~~(4)~~ The fees imposed by section 81-15,162 shall be collected in the same manner as the sales tax under the Nebraska Revenue Act of 1967, including provisions of the act relating to due dates, interest, penalties, and collection procedures. No fees shall be charged for any permits, and no collection fees shall be allowed any retailer.

~~(2) The fees imposed by section 81-15,163 shall be collected in the same manner as the litter fee under the Nebraska Litter Reduction and Recycling Act, including provisions of the act relating to due dates, interest, penalties, and collection procedures. No fees shall be charged for any permits, and no collection fees shall be allowed any retailer.~~

Sec. 23. That section 81-15,165, Revised Statutes Supplement, 1992, be amended to read as follows:

81-15,165. The Tax Commissioner shall deduct and withhold from the fees collected pursuant to ~~sections 81-15,162 and 81-15,163~~ section 81-15,162 a fee sufficient to reimburse himself or herself for the actual cost of collecting and administering such fees and shall credit such collection fee to the Waste Reduction and Recycling Incentive Fees Collection Fund which is hereby created. The Legislature shall appropriate money from the fund to the Department of Revenue to cover the actual costs of the department in administering sections 81-15,159 to 81-15,165. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 24. Sections 1 to 19, 21, 24, and 25 of this act shall become operative on July 1, 1993. Sections 20, 22, 23, and 26 of this act shall become operative on December 1, 1994, if the proceeds received prior to December 1, 1994, from the litter fee imposed by sections 81-1559 to 81-1560.02 for the period July 1, 1993, through June 30, 1994, are one million four hundred thousand dollars or more.

Sec. 25. That original sections 81-1534, 81-1536, 81-1542, 81-1548.01, 81-1548.02, 81-1549, 81-1553, 81-1556 to 81-1559, 81-1560.01 to 81-1561, 81-1563, and 81-1565, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1504.01 and 81-15,163, Revised Statutes Supplement, 1992, are repealed.

Sec. 26. That original sections 81-15,160, 81-15,164, and 81-15,165, Revised Statutes Supplement, 1992, and also section 81-15,163, Revised Statutes Supplement, 1992, as amended by section 21, Legislative Bill 203, Ninety-third Legislature, First Session, 1993, are repealed.

Sec. 27. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.