

LEGISLATIVE BILL 768

Approved by the Governor April 16, 1986

Introduced by Haberman, 44

AN ACT relating to tractor engine testing; to amend sections 2-2701 to 2-2703 and 2-2705 to 2-2711, Reissue Revised Statutes of Nebraska, 1943; to define terms; to change provisions relating to the testing of tractor models; to require permits as prescribed; to provide powers and duties; to provide for fees; to create funds; to provide for enforcement; to eliminate certain provisions relating to tractor engine testing; to eliminate a penalty; to repeal the original sections, and also sections 2-2704, 2-2712, and 2-2713, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. As used in sections 2-2701 to 2-2711 and sections 1, 3, 6, and 8 of this act, unless the context otherwise requires:

(1) Board shall mean the University of Nebraska Board of Tractor Test Engineers which shall consist of three engineers under the control of the university;

(2) Current tractor model shall mean any model included in the manufacturer's annual price list of tractors being offered for sale by its dealers or distributors;

(3) Department shall mean the Department of Agriculture;

(4) Director shall mean the Director of Agriculture or his or her authorized representative;

(5) Person shall mean bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, joint-stock companies, and associations; and

(6) Tractor shall mean an agricultural tractor which is a traction machine designed and advertised primarily to supply power to agricultural implements and farmstead equipment. An agricultural tractor propels itself and provides a force in the direction of travel to enable attached soil-engaging and other agricultural implements to perform their intended

function.

Sec. 2. That section 2-2701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2701. (1) No person shall be permitted to sell or dispose of any current tractor model No traector, traction, or traector engine company shall be permitted to sell or dispose of any model or type of gas, gasoline, kerosene, distillate or other liquid fuel traector engine in the State of Nebraska without first having (a) made application for a permit and obtained a permit to sell the tractor model, (b) said the model tested by the University of Nebraska onsite or offsite or by any Organization for Economic Cooperation and Development test station, and (c) the model passed upon by a board of three competent engineers who are or shall be under the control of the University of Nebraska the board. Each and every tractor model engine presented for testing shall be a stock model and shall not be equipped with any special appiianee or apparatus not accessory unless regularly supplied to the trade. Any tractor model engine not complying with the provisions of this section shall not be tested under sections 2-2701 to 2-2712, nor the result certified. 2-2711 and sections 1, 3, 6, and 8 of this act. Applications for the test of a traector engine shall be made to the testing board of engineers and shall be accompanied by specifications of the tractor model engine required by the board of engineers and by the fee applicable fees specified in section 2-2705 and section 8 of this act.

(2) If the an official test application, with the required specifications and fee fees, is submitted to during any other time when the test cannot be started at once Organization for Economic Cooperation and Development test station or to the University of Nebraska and an application for a temporary permit and the fee prescribed in section 8 of this act are submitted, the Department of Agriculture department, with the approval of the board, of engineers, may issue a temporary permit for the sale of the tractor engines of the model specified in the official test application. The fee test, the date on which the temporary permit shall terminate to terminates shall be fixed by the board, of engineers. All temporary permits shall be conditioned upon such tractor model engine as is covered thereby being tested at a mutually agreed-upon the earliest available date, and the traector engine company person to which whom a temporary permit has been issued shall submit a tractor model engine for test testing

which conforms to the specifications filed with the official test application. Such, which tractor model engine shall be delivered for test testing at any time specified by the board of engineers. the mutually agreed-upon date. Upon failure so to do, all such fees deposited by said companies such person shall be forfeited to the State of Nebraska, University of Nebraska Tractor Test Cash Fund, except that the fee imposed in section 8 of this act shall be deposited in and forfeited to the Tractor Permit Cash Fund, and in addition such companies person shall be liable to the penalties prescribed by section 2-2710 and shall never thereafter not be issued any temporary permit whatever; PROVIDED, that all for a period of five years from the date such tractor was to be delivered for testing and until such person meets the obligations required under subsection (3) of this section to the department's satisfaction. Any person who, prior to the effective date of this act, has been barred from applying for temporary permits may again make applications for temporary permits if five years have passed from the date such person last failed to deliver a tractor as specified by the board.

(3) All sales of tractors tractor engines upon which a temporary permit has been issued shall be made subject to the final official test and approval of the tractor model as follows: For the purposes of sections 2-2701 to 2-2712, unless the context otherwise requires: Tractor engine shall mean any vehicle which moves itself and which is represented by the seller or manufacturer as suitable for use with attachments, implements, or devices which engage the soil and require a force in the direction of vehicle motion to perform their function; PROVIDED, that such attachments, implements, or devices have a function other than that of transport-

(a) If a tractor model upon which a temporary permit has been issued was not submitted for the official test and approval on the mutually agreed-upon date, the person to whom the temporary permit was issued shall repurchase any such tractor sold in Nebraska under the temporary permit; and

(b) If a tractor model upon which a temporary permit has been issued fails in the official test to meet the specifications of the tractor model which were filed with the application and fees, the person to whom the temporary permit was issued shall send a notice, as approved by the department, to any person in Nebraska who has purchased a tractor sold under the temporary

permit. The person to whom the temporary permit was issued shall either modify the tractor to meet the specifications filed with the board or remedy to the satisfaction of the purchaser any injury incurred by the purchaser which was caused by the failure of the tractor to meet the specifications claimed. Such person shall be prohibited from modifying sales literature, advertisement claims, or specifications of the tractor to avoid such notice.

Sec. 3. (1) Any person who applies for a permit to sell a tractor model in the state shall provide to the department at the time of application information on the availability and accessibility of service and replacement parts for such tractor model. Such information shall include the names and addresses of any regional service, parts, or supply dealers, instructions on how to order parts and supplies, and any limitations as to the availability and accessibility of service and replacement parts. Any person who fails to provide the information required in this section shall not be issued a sales permit for the tractor model. The information received by the department pursuant to this section shall be public information.

(2) Any person who initially sells to the ultimate consumer a current tractor model for which a sales permit has been issued after the effective date of this act shall provide to the purchaser written notice that the information required in subsection (1) of this section has been filed with and is available at the department. Any remedy for failure to comply with this subsection shall be as provided in subsection (3) of this section.

(3) Any person who provides to the department information required in subsection (1) of this section which is inaccurate at the time of application shall be liable for damages to any injured purchaser of the tractor for which a sales permit has been issued, and any person who fails to provide the notice required in subsection (2) of this section shall be liable for damages to the person who purchased such tractor from such person. For purposes of this section, damages may include, but shall not be limited to, loss of profits, the additional cost of shipment of parts, and the additional cost of obtaining parts or services from another provider. In any action brought under this section, the court may award reasonable attorney's fees to the prevailing party.

Sec. 4. That section 2-2702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

2-2702. Such tests shall consist of endurance, official determination of horsepower for continuous load at all regular power outlets, consumption of fuel, and tests related to the health and safety of the operator or the public as may be established and required by regulation promulgated by the Director of Agriculture. The results of such tests shall be open at all times to public inspection. (1)(a) The Board of Regents of the University of Nebraska shall adopt and promulgate rules and regulations setting forth codes for the official testing of tractors.

(b) The Board of Regents of the University of Nebraska shall adopt procedures for the official testing of agricultural tractors as prescribed by the Organization for Economic Cooperation and Development.

(c) The Board of Regents of the University of Nebraska shall also adopt and promulgate rules and regulations for the testing of tractors as published by the Society of Automotive Engineers and the American Society of Agricultural Engineers.

(2) In addition to the powers and duties prescribed in sections 2-2701 to 2-2711 and sections 1, 3, 6, and 8 of this act, the University of Nebraska shall have the power to:

(a) Authorize the use of the Nebraska Tractor Testing Laboratory facilities to conduct Organization for Economic Cooperation and Development testing;

(b) Cooperate with the United States Department of Commerce when planning and conducting Organization for Economic Cooperation and Development testing;

(c) Conduct offsite tractor tests; and

(d) Submit and certify tractor test results to the federal government.

Sec. 5. That section 2-2703, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2703. The board of engineers, after having duly tested any model of liquid fuel tractor engine After a tractor model has been duly tested by the University of Nebraska or by any Organization for Economic Cooperation and Development test station, the board shall submit certify the results of such test to the Department of Agriculture department. Prior to the issuing issuance of a permanent sales permit by the department to any liquid fuel tractor engine company to do business in the State of Nebraska, the official tests shall be compared with the representations of the

tractor engine company as to horsepower rating for net less than ten consecutive hours of continuous load, fuel, used for developing such horsepower, and to any person for the sale of a tractor model, the board shall compare the test results with the manufacturer's representations as to power, fuel, and other ratings of the tractor model. any other representation such company shall make, and in case if any such representations are shall be found to be false, the board shall recommend that the department shall deny the company manufacturing or assembling such tractor engine the right to do business in the State of Nebraska, except as provided in section 2-2706; PROVIDED, that any a permit for the sale of such tractor model. Any representation which a tractor engine company shall make person makes with regard to the horsepower performance of its tractor engine at other than the customarily used power outlets shall be subject to test at the option of the board of engineers.

Sec. 6. Upon application by any person and payment of the fee required in section 8 of this act, the board may recommend to the department that a supplemental permit be issued to such person for the sale of a new tractor model based upon the official test results of a previous tractor model. The specifications and performance representations of the new tractor model shall be compared to the official test results of the previous tractor model, and if there are no substantial changes in specifications, performance representations, and the capacity of the new tractor model to meet such specifications and representations of performance, the board shall recommend to the department the issuance of a supplemental permit. The board may require further testing of the new tractor model upon which a permit is sought and may require the person making application to provide for reimbursement for the cost of such tests pursuant to section 2-2705. If further testing is performed, the board shall certify the results of such tests and forward them to the department.

Sec. 7. That section 2-2705, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2705. Application to the board of engineers for the testing of a tractor model by the University of Nebraska engine shall be accompanied by the fee prescribed in section 8 of this act and such fee as shall be prescribed by the Board of Regents of the University of Nebraska as a partial reimbursement for making the same application.

Fees collected for the testing of tractors by the Nebraska Tractor Testing Laboratory shall be deposited in the University of Nebraska Tractor Test Cash Fund, which fund is hereby created. The fund shall be used by the Nebraska Tractor Testing Laboratory to defray the expenses of testing tractors. Any accrued interest shall also be credited to the fund, except that the cash carryover of such fund from one biennium to the next biennium shall not exceed, by more than fifteen per cent, the total cash fund expenditures for the average of the five preceding years. Any amount in excess of such fifteen per cent shall be forwarded to the University of Nebraska. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

The board is empowered to Board of Regents may establish and change, from time to time, as it determines advisable, a schedule of fees for such tractor engine tests, except that such fee schedule shall not include the application fee prescribed in section 8 of this act.

Sec. 8. There is hereby imposed a fee of fifty dollars for each application for any permit made to the board pursuant to sections 2-2701 to 2-2711 and sections 1, 3, 6, and 8 of this act. Such fee shall be in addition to the fees provided for in section 2-2705 and shall be paid to the department. All fees collected by the department pursuant to this section shall be paid into the state treasury and credited by the State Treasurer to the Tractor Permit Cash Fund, which fund is hereby created. The fund shall be used by the department to defray the expenses of administering sections 2-2701 to 2-2711 and sections 1, 3, 6, and 8 of this act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 9. That section 2-2706, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2706. The failure of any model of tractor model engine to come up to meet the specifications and representations made by the applicant of the company manufacturing or assembling it shall not prevent the company applicant from placing on the market other models of tractor engines tractor models that do comply with specifications and ratings the permit requirements of sections 2-2701 to 2-2711 and sections 1, 3, 6, and 8 of this act. Any model of tractor model engine that fails, in the official test, to come up to the company's

meet the applicant's own specifications and representations may be retested after alteration and remodeling upon submission of a new test application and fee the fees prescribed in section 2-2705 and section 8 of this act. Each and every permit issued under sections 2-2701 to 2-2712 2-2711 and sections 1, 3, 6, and 8 of this act shall specify the model or models included in such permit to sell.

Sec. 10. That section 2-2707, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2707. The report of the official test required by section 2-2701 shall be published by the board and made available in the Agricultural Engineering Department of the University of Nebraska, eight copies to the Nebraska Publications Clearinghouse, and in such other places as may be designated by the board of engineers. All information pertaining to the official testing of a tractor shall be public record and available for inspection during normal business hours.

Sec. 11. That section 2-2708, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2708. No tractor engine company person shall use the results of such tests in such manner as would cause it to appear that the University of Nebraska or the Department of Agriculture department intended to recommend the use of any given type or model of tractor model engine in preference to any other type or model. It shall be unlawful for any tractor engine company operating in the State of Nebraska to publish extracts from such official tests for advertising purposes without publishing the entire report. For any violation of the foregoing provision this section the Department of Agriculture department may, in its discretion, suspend any permit issued to that person or deny such person the right of obtaining future permits to sell tractors the right of any such company to do business in the state.

Sec. 12. That section 2-2709, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2709. Tractor engines Except when a temporary permit has been issued pursuant to subsection (2) of section 2-2701, tractors shall be tested by the board of engineers in the order in which they are presented for such tests, and no discrimination shall be made for or against any tractor engine company person in any manner whatsoever. Complaints against the alleging

a violation of this provision section shall be heard and adjudicated by the Department of Agriculture department.

Sec. 13. That section 2-2710, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2710. Any person gas, gasoline, kerosene, distillate or other liquid fuel tractor, traction, or tractor engine company selling or offering a current tractor model for sale for use in the State of Nebraska, or any automobile, implement or other company or individual operating in behalf of such tractor engine company or on his own behalf, who shall sell or offer for sale for use in the state any model of liquid fuel tractor engine, either new or used, without a permit issued by the department for such tractor model having in his possession a permit issued by the Department of Agriculture to sell such model of tractor engines as he is offering for sale for use in this state, shall be guilty of a Class I misdemeanor for each offense: be required to repurchase any such tractor model sold in Nebraska for which a permit has not been issued.

Sec. 14. That section 2-2711, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-2711. The Department of Agriculture department shall have full authority to enforce the provisions of sections 2-2701 to 2-2712, 2-2711 and sections 1, 3, 6, and 8 of this act both by denial of a permit to do business sell tractors in the state and by injunctive relief in the district court having jurisdiction. The department shall adopt and promulgate rules and regulations as are necessary to enforce the intent and purposes of such sections.

Sec. 15. That original sections 2-2701 to 2-2703 and 2-2705 to 2-2711, Reissue Revised Statutes of Nebraska, 1943, and also sections 2-2704, 2-2712, and 2-2713, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 16. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.