

LEGISLATIVE BILL 406

Approved by the Governor May 8, 1993

Introduced by Agriculture Committee: Dierks, 40, Chairperson;
Chambers, 11; Cudaback, 36; Elmer, 38;
Schellpeper, 18; Vrúška, 1

AN ACT relating to agriculture; to amend sections 2-1072, 2-1074, 2-1075, 2-1079, 2-1091, 2-1092, 2-1094, 2-1095, 2-1097, 2-1099, 2-10,100, 2-10,101, 2-10,103, 2-10,105, 2-10,113, 2-10,115, 2-10,116, and 2-10,117, Reissue Revised Statutes of Nebraska, 1943; to define and redefine terms; to change and provide powers and duties relating to enforcement of the Plant Protection and Plant Pest Act; to provide for and change provisions relating to licensing of growers, dealers, brokers, and collectors of plants under the act; to change penalty provisions and provide for administrative fines; to provide for and change provisions relating to permits to import foreign nursery stock and plant pests as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 2-1072, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1072. Sections 2-1072 to 2-10,117 and sections 3, 5, 6, 8 to 10, 12, 19, 20, 23 to 26, 30, and 32 of this act shall be known and may be cited as the Plant Protection and Plant Pest Act.

Sec. 2. That section 2-1074, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1074. For purposes of the Plant Protection and Plant Pest Act, unless the context otherwise requires, the definitions found in sections 2-1075 to 2-1089 and sections 3, 5, 6, and 8 to 10 of this act shall be used.

Sec. 3. Biological control shall mean:

(1) The use by humans of living organisms to control or suppress undesirable animals, plants, or microorganisms which affect plants or plant pests; or

(2) The action of parasites, predators, pathogens, or competitive organisms on a host or prey population which affect plants or plant pests to produce a lower general equilibrium than would prevail in the absence of the biological control agents.

Sec. 4. That section 2-1075, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1075. ~~Biological control agent shall mean any living organism which, because of its parasitic, predatory, or other biological characteristics, may be used or intended for use in the suppression or~~

control of plant pests by biological rather than chemical means a parasite, predator, pathogen, or competitive organism intentionally released by humans for the purposes of biological control with the intent of causing a reduction of a host or prey population.

Sec. 5. Broker shall mean any person who solicits or takes orders for or sells nursery stock in the state other than a grower, dealer, person employed by and while acting as an employee of a grower licensed in this state or a dealer licensed in this state, or person employed by and while acting as an employee of a person meeting the requirements of subsection (1) of section 2-10,104.

Sec. 6. Director shall mean the Director of Agriculture or his or her designated employee, representative, or authorized agent.

Sec. 7. That section 2-1079, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1079. Distribute shall mean selling, exchanging, bartering, moving, or transporting; ; offering to sell, exchange, barter, move, or transport; holding nursery stock for sale, exchange, or barter; acting as a broker; ; or otherwise supplying. Distribute shall not include moving or transporting on contiguous real estate that is owned, leased, or controlled by the same person.

Sec. 8. Distribution location shall mean each place nursery stock is offered for sale or sold and shall also include all locations of a vehicle from which nursery stock is offered for sale or sold directly. Distribution location shall not include each location from which an order is made by a purchaser ordering by mail, telephone, or facsimile transmission but shall include the location where such orders are received within the state.

Sec. 9. Genetically engineered plant organism shall mean an organism altered or produced through genetic modification from a donor, vector, or recipient organism using recombinant deoxyribonucleic acid techniques.

Sec. 10. Place of origin shall mean the county and state where nursery stock was most recently grown for a period of not less than one cycle of active growth.

Sec. 11. That section 2-1091, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1091. For the purpose of enforcement of the Plant Protection and Plant Pest Act or any rule or regulation, the department may:

(1) Enter and inspect at reasonable times and in a reasonable manner without being subject to any action for trespass or damages, if reasonable care is exercised, all property where plants are grown, packed, or distributed and all vehicles, equipment, packing materials, containers, records, and labels on such property. The department may inspect and examine all records and property relating to compliance with the act. Such records and property shall be made available to the department for review at all reasonable times;

(2) In a reasonable manner, hold for inspection and take

samples of any plants and associated materials which may not be in compliance with the act;

(3) Inspect or reinspect at any time or place any plants that are in the state or being shipped into or through the state and treat, seize, destroy, require treatment or destruction of, or return to the state of origin any plants in order to inhibit or prevent the movement of plant pests throughout the state;

(4) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 from a court of record if any person refuses to allow the department to inspect pursuant to this section;

(5) Issue a written or printed withdrawal-from-distribution order and post signs to delineate sections not marked pursuant to subdivision (6) of section 2-1092 or sections of distribution locations and to notify persons of any withdrawal-from-distribution order when the department has reasonable cause to believe any lot of nursery stock is being distributed in violation of the act or any rule or regulation;

(6) Apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond;

(7) Issue a quarantine or establish a quarantine area;

(8) Cooperate and enter into agreements with any person in order to carry out the purpose of the act;

(9) Establish a restricted plant pest list to prohibit the movement into the state of plant pests not known to occur in Nebraska and to prohibit the movement of those plant pests present in the state but known to be destructive to the plant industry;

(10) Issue phytosanitary and export certificates on plants for individual shipment to other states or foreign countries if those plants comply with the requirements or regulations of such state or foreign country;

(11) Inspect plants that any person desires to ship into another state or country when such person has made an application to the department for such inspection. The inspection shall determine the presence of plant pests to determine the acceptance of the plants into other states or countries. The department may accept the inspections of laboratories authorized by the department or field inspectors of the department;

(12) Certify plants or property to meet the requirements of specific quarantines imposed on Nebraska or Nebraska plants. The quarantine certification requirements shall be set forth in the rules and regulations;

(13) Assess and collect charges for inspections, services, or work performed in carrying out subdivisions (10) ~~to~~ through (12) of this section. Such charges shall not exceed the actual cost of accomplishing

such work. The department may for purposes of administering subdivisions (10) ~~to~~ through (12) of this section establish in rules and regulations such items as charges, inspection requirements, standards, and issuance, renewal, or revocation of certificates or permits necessitated by such subdivisions; ~~and~~

(14) Conduct continuing survey and detection programs on plant pests to monitor the population or spread of plant pests;

(15) Issue, place on probation, suspend, or revoke licenses required by the act or deny applications for such licenses pursuant to the act; and

(16) Issue orders imposing administrative fines or cease and desist orders pursuant to the act.

Sec. 12. (1) A person shall not operate as a grower, a dealer, or a collector without a valid license issued by the department. A person licensed as a grower shall not be required to obtain a separate dealer's license.

On or after December 31, 1993, a person shall not operate as a broker without a valid license issued by the department.

(2) Application for a license required by subsection (1) of this section shall be made to the director on forms furnished by the department. Such application shall include the full name and mailing address of the applicant, the names and addresses of any partners or corporate officers, the name and address of the person authorized by the applicant to receive notices and orders of the department as provided in the Plant Protection and Plant Pest Act, whether the applicant is an individual, partnership, corporation, or other legal entity, the location of the operation, and the signature of the applicant. A person distributing greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, sod, turf, onions, or potatoes, or seeds of any such plant, shall not be required to obtain a license but may do so pursuant to section 2-10,105.

(3) Each applicant for a license shall furnish a signed written statement that such person will acquire and distribute only nursery stock which has been distributed by a person who is duly licensed pursuant to the act or approved by an authorizing agency within the state of origin recognized by the department.

(4) Every licensee shall continually maintain a complete and accurate list with the department of all sources from which nursery stock is obtained.

(5) Each licensee shall keep and make available for examination by the department for a period of three years an accurate record of all transactions conducted in the ordinary course of business. Records pertaining to such business shall at a minimum include the names of the persons from which nursery stock was received, the receiving date, the amount received, and the variety and place of origin of the nursery stock received. A broker's records shall also include the names of the persons to which nursery stock was delivered, the delivery date, the amount delivered, and the variety and place of origin of the nursery stock

delivered.

(6) A license shall lapse automatically upon a change of ownership, and the subsequent owner must obtain a new license. The license of a grower, dealer, or collector shall lapse automatically upon a change of location, and such licensee must obtain a new license. A licensee shall notify the department in writing at least thirty days prior to any change in ownership, name, or address. A licensee shall notify the department in writing before there is a change of the name or address of the person authorized to receive notices and orders of the department. When a licensee permanently ceases operating, he or she shall return the license to the department.

Sec. 13. That section 2-1092, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1092. All growers in the State of Nebraska shall conform to the following requirements:

(1) Each grower shall apply for a grower's license, on forms prescribed furnished by the department, prior to March 15 for the following fiscal year. Each fiscal year shall begin on October 1; ~~Any person making an initial application shall do so prior to beginning distribution. No person distributing greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, shall be required to obtain a grower's license;~~

~~(2) Each applicant for a grower's license shall furnish a signed written statement that such person shall acquire and further distribute only nursery stock which has been distributed by a person who is licensed by the department as a grower or dealer or approved by an authorizing agency within the state of origin recognized by the department. Every grower shall continually maintain a complete and accurate list with the department of all sources from which nursery stock is obtained;~~

~~(2) (3) All grower's licenses shall expire on September 30 each year unless previously revoked;~~

~~(3) (4) Prior to license issuance, all applicants shall submit an inspection fee, not to exceed twenty-five dollars per acre inspected, as set forth in the rules and regulations;~~

~~(4) (5) Applications not received prior to April 15 and initial applications not received prior to beginning distribution shall be considered delinquent and shall have an inspection fee of all actual costs assessed to the person making the application, not to exceed thirty-five dollars per acre inspected, fifty cents per mile traveled for the purpose of inspection, and twenty-five dollars per hour for travel and inspection time, as set forth in the rules and regulations;~~

~~(5) (6) A copy of the valid grower's license shall be posted in a conspicuous place at the distribution location; and~~

~~(6) Each grower shall post sign markers which delineate sections of nursery stock. A section shall be no larger than five acres.~~

~~(7) Each grower shall keep and make available for examination by the department for a period of two years an accurate~~

~~record of all transactions conducted in the ordinary course of business. Records pertaining to such business shall at a minimum include the names of the persons from which nursery stock was received, the receiving date, and the amount and variety of nursery stock; and~~

~~(8) Any grower who has a valid certificate issued by the department as of September 30, 1988, shall be deemed to be licensed by the department for purposes of the Plant Protection and Plant Pest Act. Such license shall expire on September 30, 1989, unless previously revoked.~~

Sec. 14. That section 2-1094, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1094. Upon inspection of a representative amount of nursery stock and the satisfaction of requirements prescribed in section 2-1092 and section 12 of this act, the department shall issue a grower's license, with any applicable restrictions prescribed in section 2-1095, to the grower. Each grower shall be allowed one distribution location per valid grower's license. Each additional distribution location shall require a separate application, inspection, and license, as set forth in section 12 of this act, with fees assessed as set forth in section 2-1092. ~~A person licensed as a grower shall not be required to obtain a separate dealer's license. A grower's license shall not be transferable to another person or another location.~~

Sec. 15. That section 2-1095, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1095. (1) Following the inspection, the department shall provide a copy of the plant inspection report to the grower specifying any area of the nursery from which nursery stock cannot be distributed or any plants which may not be distributed as nursery stock. When deemed necessary to maintain compliance with the purposes of the Plant Protection and Plant Pest Act, the department shall require the grower to withdraw from distribution any variety or amount of nursery stock. A reinspection may be conducted by the department at the grower's request and cost. The department may also reinspect to determine compliance with the act. To determine the cost of any reinspection, the department shall use rates as outlined in subdivision ~~(5)~~ (4) of section 2-1092. The grower shall comply with the recommendations of the department as to the treatment or destruction of nursery stock.

(2) The department may require the treatment or destruction of any nursery stock that is infested or infected with plant pests, nonviable, damaged, or desiccated to the point of not being reasonably capable of growth.

(3) Any nursery stock on which a withdrawal-from-distribution order has been issued shall be released for distribution only by authorized department employees or after written permission has been obtained from the department. Each grower shall promptly report to the department, in writing, the amount and type of plants treated or destroyed under requirements on withdrawal-from-distribution orders. The department may withhold a

grower's license until conditions have been met by the grower as specified in the plant inspection report or any other order issued by the department. A grower's license may be issued covering portions of the nursery which are not infested or infected if the grower agrees to treat, destroy, or remove as specified by the department those plants found to be infested or infected.

Sec. 16. That section 2-1097, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1097. Every dealer shall conform to the following requirements:

(1) Each dealer shall apply for a dealer's license, on forms ~~prescribed~~ furnished by the department, prior to December 31 for the following calendar year; ~~Persons making an initial application shall do so prior to beginning distribution. No person distributing greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, shall be required to obtain a dealer's license;~~

~~(2) Each applicant for a dealer's license shall furnish a signed written statement that such person shall acquire and further distribute only nursery stock which has been distributed by a person who is licensed by the department as a grower or dealer or approved by an authorizing agency within the state of origin recognized by the department. Every dealer shall continually maintain a complete and accurate list with the department of all sources from which nursery stock is obtained;~~

~~(2) (3)~~ A dealer's license shall expire on December 31 each year unless previously revoked;

~~(3) (4)~~ All applications shall be accompanied by a fee not to exceed one hundred dollars as set forth in the rules and regulations;

~~(4) (5)~~ Applications not received prior to February 1 and initial applications not received prior to beginning distribution shall be considered delinquent and shall have an additional delinquent fee assessed of twenty percent per month of the total amount of the fee for the license, not to exceed one hundred percent;

~~(5) (6)~~ A copy of the valid dealer's license shall be posted in a conspicuous place at the distribution location; and

~~(7) Each dealer, including those who operate a mechanical digger, shall keep and make available for examination by the department for a period of two years an accurate record of all transactions conducted in the ordinary course of business. Records pertaining to such business shall at a minimum include the names of the persons from which nursery stock was received, the receiving date, the amount received, and the variety of nursery stock;~~

~~(8) Any dealer who is certified by the department as of September 30, 1988, shall be deemed to be licensed by the department for purposes of the Plant Protection and Plant Pest Act. Such license shall expire on December 31, 1988, unless previously revoked; and~~

~~(6) (9)~~ Every dealer distributing nursery stock from more than one location shall secure a dealer's license for each distribution

location, ~~from which nursery stock is distributed.~~

Sec. 17. That section 2-1099, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1099. ~~If the applicant satisfies the requirements as outlined in~~ of section 2-1097 and section 12 of this act, the department shall issue a dealer's license to the applicant. ~~A dealer's license shall not be transferable to another person or location.~~

Sec. 18. That section 2-10,100, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-10,100. If upon inspection nursery stock is found to be nonviable, mislabeled, or infested or infected with plant pests, the department may specify any area of the distribution location from which nursery stock cannot be distributed or any plants at the distribution location which may not be distributed as nursery stock. The department may post signs pursuant to subdivision (5) of section 2-1091 to specify any such area. A written or printed withdrawal-from-distribution order shall be issued identifying any nursery stock which cannot be distributed. A reinspection may be conducted by the department at the dealer's request and cost. The department may also reinspect to determine compliance with the act. To determine the cost of any reinspection, the department shall use rates as outlined in subdivision ~~(5)~~ (4) of section 2-1092. The dealer shall comply with the recommendations of the department as to the treatment or destruction of nursery stock. Each dealer shall promptly report to the department, in writing, the amount and type of plants treated or destroyed under requirements in withdrawal-from-distribution orders. Nursery stock on which such orders are placed by the department shall be released for distribution only by authorized department employees or after written permission has been obtained from the department.

Sec. 19. Every broker shall conform to the following requirements:

(1) On or before December 31, 1993, and prior to each December 31 thereafter, a broker shall apply for a broker's license for the following calendar year;

(2) A broker's license shall expire on December 31 each year unless previously revoked;

(3) All applications shall be accompanied by a fee of fifty dollars until the director determines the fee shall be increased. Such fee shall not exceed one hundred dollars. All fee changes shall be set forth in the rules and regulations adopted and promulgated by the department; and

(4) The broker's license shall be made available to the department upon request.

Sec. 20. If the applicant satisfies the requirements of sections 12 and 19 of this act, the department shall issue a broker's license to the applicant.

Sec. 21. That section 2-10,101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-10,101. All nursery stock distributed by any dealer or

broker shall be only sound, healthy nursery stock that is reasonably capable of growth, labeled correctly, free from injurious plant pests, and stored or displayed under conditions which shall maintain its vigor as outlined in rules and regulations.

Sec. 22. That section 2-10,103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-10,103. ~~(1) The department may suspend or withhold any license or place the licensee on probation with the imposition of corrective actions to be taken by such licensee whenever it has reason to believe that:~~

~~(a) The license has been used for the further distribution of nursery stock obtained from an unlicensed grower or dealer;~~

~~(b) The license is being used by any person other than the person to whom it was issued;~~

~~(c) The licensee has failed to comply~~ A licensee shall:

(1) Comply with the Plant Protection and Plant Pest Act and the rules and regulations:

(a) (i) In the care of nursery stock;

(b) (ii) In the distribution of nursery stock including nursery stock that has been withdrawn from distribution;

(c) (iii) Regarding treatment or destruction of nursery stock as required by a withdrawal-from-distribution order; or

(d) (iv) In maintaining the nursery stock in a manner accessible to the department; or and

(e) In the payment of license fees;

(2) Comply with any order of the director issued pursuant to the act;

(3) Not distribute nursery stock obtained from an unlicensed grower or dealer;

(4) Not allow the license to be used by any person other than the person to whom it was issued; and

(5) Not interfere with the department in the performance of its duties.

~~(d) The licensee has committed any other violation of the act.~~

~~(2) The department shall in all cases, except when an imminent hazard to the public health, safety, or welfare exists or in any case of a willful refusal to permit an authorized inspection, serve upon the applicant or licensee a written notice of intent to suspend or withhold the license or place the licensee on probation. Such notice shall specify the violation in question and may provide such person a reasonable opportunity to correct such violation before making any order of withholding, probation, or suspension effective. An opportunity for a hearing before the department on this matter shall be provided. Any withholding, probation, or suspension shall remain in effect until the violation has been corrected to the satisfaction of the department.~~

~~(3) Upon repeated or serious violations of the act, the department may revoke a license following reasonable notice to the~~

licensee and an opportunity for a hearing. This section is not intended to preclude the institution of any court action as provided in the act.

Sec. 23. (1) A licensee may be placed on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist from failing to comply or be ordered to pay an administrative fine pursuant to section 24 of this act after:

(a) The director determines the licensee has not complied with section 2-10,103;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the specified order should not be issued; and

(c) The director finds that issuing the specified order is appropriate based on the hearing record or the available information if the hearing is waived by the licensee.

(2) A license may be suspended after:

(a) The director determines the licensee has not complied with section 2-10,103;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be suspended; and

(c) The director finds that issuing an order suspending the license is appropriate based on the hearing record or the available information if the hearing is waived by the licensee.

(3) A license may be immediately suspended and the director may order the licensee's operation to cease prior to hearing when:

(a) The director determines an immediate danger to the public health, safety, or welfare exists in the licensee's operation; and

(b) The licensee receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the licensee may request in writing a date for a hearing and the director shall consider the interests of the licensee when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a licensee does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and notify the licensee of the date and time of such hearing.

(4) A license may be revoked after:

(a) The director determines the licensee has committed serious, repeated, or multiple violations of any of the requirements of section 2-10,103;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and

(c) The director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(5) Any licensee whose license has been suspended shall

cease operations until the license is reinstated. Any licensee whose license is revoked shall cease operating until a new license is issued.

(6) The director may terminate a proceeding to suspend or revoke a license or subject a licensee to an order of the director described in subsection (1) of this section at any time if the reasons for such proceeding no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a licensee may no longer be subject to the director's order if the director determines that the conditions which prompted the suspension, revocation, or order of the director no longer exist.

(7) Proceedings to suspend or revoke a license or subject a licensee to an order of the director described in subsection (1) of this section shall not preclude the department from pursuing other civil or criminal actions.

Sec. 24. (1) Pursuant to section 23 of this act, the director may issue an order imposing an administrative fine on a licensee in an amount which shall not exceed five hundred dollars. In determining whether to impose an administrative fine and, if a fine is imposed, the amount of the fine, the director shall take into consideration (a) the seriousness of the violation, (b) the extent to which the licensee derived financial gain as a result of his or her failure to comply, (c) the extent of intent, willfulness, or negligence by the licensee in the violation, (d) the likelihood of the violation reoccurring, (e) the history of the licensee's failure to comply, (f) the licensee's attempts to prevent or limit his or her failure to comply, (g) the licensee's willingness to correct violations, (h) the nature of the licensee's disclosure of violations, (i) the licensee's cooperation with investigations of his or her failure to comply, and (j) any factors which may be established by the rules and regulations.

(2) All money collected by the department as an administrative fine shall be remitted on a monthly basis to the State Treasurer for credit to the permanent school fund.

(3) Any administrative fine imposed under the Plant Protection and Plant Pest Act and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The lien shall attach to the real estate of the violator when notice of such lien is filed and indexed against the real estate in the office of the register of deeds or county clerk in the county where the real estate is located.

Sec. 25. Whenever the director has reason to believe that any person has violated any provision of the Plant Protection and Plant Pest Act or any rule or regulation, an order may be entered requiring the person to appear before the director to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. Such order shall set forth notice of such hearing. Hearings shall be conducted as provided in section 26 of this act. After such hearing, if the director finds such person to be in violation, he or she shall enter an

order requiring the person to cease and desist from the specific act, practice, or omission which violated the act.

Sec. 26. (1) Any notice or order provided for in the Plant Protection and Plant Pest Act shall be personally served on the licensee or on the person authorized by the licensee to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the licensee or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) Any notice to comply provided for in the act shall set forth the acts or omissions with which the licensee is charged.

(3) A notice of the licensee's right to a hearing provided for in the act shall set forth the time and place of the hearing except as otherwise provided in subsection (3) of section 23 of this act. A notice of the licensee's right to such hearing shall include notice that the licensee's right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the licensee's right to a hearing to show cause why the license should not be revoked shall include notice to the licensee that the license may be revoked or suspended, that the licensee may be subject to an order of the director described in subsection (1) of section 23 of this act, or that the license may be suspended and the licensee subject to such an order if the director determines such action is more appropriate. A notice of the licensee's right to a hearing to show cause why the license should not be suspended shall include notice to the licensee that the license may be suspended or that the licensee may be subject to an order of the director described in subsection (1) of section 23 of this act if the director determines such action is more appropriate.

(4) The hearings provided for in the act shall be conducted by the director at a time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (3) of section 23 of this act, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) A licensee shall be deemed to waive the right to a hearing if such licensee does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the licensee shows the director that the licensee had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the licensee waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (3) of section 23 of this act, the director shall sustain, modify, or rescind the order.

(6) Any person aggrieved by the finding of the director shall

have ten days from the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director shall become final upon the expiration of ten days after its entry if no request for a new hearing is made.

Sec. 27. That section 2-10,105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-10,105. (1) Optional inspections of plants may be conducted by the department upon request by any persons desiring such inspection. A fee as set forth in subdivision ~~(5)~~ (4) of section 2-1092 shall be charged for such an inspection.

(2) Any person who desires a grower's license for any greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, may apply for such license to the department. The inspection of such plants shall conform to the same requirements that apply to the inspection of nursery stock as set forth in sections 2-1092 to 2-1096 and section 12 of this act. For persons who grow or distribute both nursery stock and greenhouse plants grown for indoor use, annual plants, biennial plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, one license shall be issued if the annual inspection of such plants is conducted concurrently with the nursery stock inspection and the other requirements of the Plant Protection and Plant Pest Act are met. If ~~an additional inspection~~ a reinspection trip is required, the applicant shall be assessed ~~an additional a reinspection~~ fee as outlined in subdivision ~~(5)~~ (4) of section 2-1092.

Sec. 28. That section 2-10,113, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-10,113. (1) Any person receiving any shipment of nursery stock from any foreign country that has not been inspected and released by the United States Department of Agriculture at the port of entry shall notify the department of the arrival of such shipment, its contents, and the name of the consignor. Such person shall hold the shipment unopened until inspected or released by the department.

(2) No person shall import or cause to be brought into Nebraska any soils or plant pests or distribute within the state any nonindigenous plant pests to be used in the open environment for research purposes or other educational uses without permission from the department.

(3) No person shall import or cause to be brought into Nebraska or distribute within the state any nonindigenous biological control agent or genetically engineered plant organism to be used in the open environment without a permit as set forth in rules and regulations. Such rules and regulations may provide for reasonable exemptions from permit requirements. A permit shall not be required under this section if a permit has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., or any regulations adopted and promulgated pursuant to such act.

An application for a permit shall include information regarding where the biological control agent or genetically engineered plant organism will be released and any other information required by the department. An application for a permit to import or distribute an arthropod to be used as a biological control agent shall be accompanied by a voucher specimen. Permits may be issued only after the department determines that the proposed shipment or use will not create sufficient hazard to warrant the refusal of a permit. Sufficient hazard shall include, but not be limited to, a substantial hazard to the environment or to plant or animal life not intended to be affected by the agent or organism. The department may rely upon the findings of interested federal agencies or any experts that the department may deem appropriate in making a determination about the threat posed by such agents or organisms. The department may also request confidential business information.

(4) An applicant submitting information required by this section may mark clearly portions of data which in his or her opinion are trade secrets and submit the marked material separately from other material required to be submitted under this section. The department shall keep such material confidential and in a manner that makes it not accessible to anyone who does not need to have access to it in order to adequately protect the public health, safety, or welfare.

Sec. 29. That section 2-10,115, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-10,115. (1) Any person shall be guilty of a Class IV misdemeanor for the first violation and a Class II misdemeanor for any subsequent violation of the same nature if that person:

(a) Distributes nursery stock and has not been duly licensed under the Plant Protection and Plant Pest Act;

(b) Receives nursery stock for further distribution from any person who has not been duly licensed or approved under the act;

(c) Uses any license issued by the department after it has been revoked or has expired, while the licensee was under suspension, or for purposes other than those authorized by the act;

(d) Offers any hindrance or resistance to the department in the carrying out of the act, including, but not limited to, denying or concealing information or denying access to any property relevant to the proper enforcement of the act;

(e) Allows any plant declared a nuisance plant as outlined in section 2-10,107 to exist on such person's property or distributes any such plants or materials capable of harboring plant pests;

(f) ~~Is licensed~~ Acts as a grower, ~~or~~ dealer, or broker

and:

(i) Fails to comply with provisions for treatment or destruction of nursery stock as required by withdrawal-from-distribution orders;

(ii) Distributes any quarantined nursery stock or nursery stock for which a withdrawal-from-distribution order has been issued;

~~or~~

(iii) Distributes nursery stock for the purpose of further distribution to any person in Nebraska not licensed as a grower or dealer;
or

(iv) Fails to pay all fees required by the act and the rules and regulations;

(g) Distributes nursery stock which is not sound, healthy, reasonably capable of growth, labeled correctly, and free from injurious plant pests;

(h) Distributes plants which have been quarantined or are in a quarantined area;

(i) Violates any item set forth as unlawful in section 2-10,106; or

(l) Distributes biological control agents or genetically engineered plant organisms without a permit if a permit is required by the act;

(k) Fails to keep and make available for examination by the department all books, papers, and other information necessary for the enforcement of the act;

(l) Violates any order of the director after such order has become final or upon termination of any review proceeding when the order has been sustained by a court of law; or

(m) (j) Violates any other provision of the Plant Protection and Plant Pest Act.

(2) Any lot or shipment of plants not in compliance with the Plant Protection and Plant Pest Act, ~~and~~ the rules and regulations, or both shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the county in which such plants are located. If the court finds the plants to be in violation of the act, the rules and regulations, or both and orders the condemnation of the plants, such plants shall be disposed of in any manner deemed necessary by the department. In no instance shall the disposition of the plants be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such plants or for permission to treat or relabel the plants to bring such plants into compliance with the act, the rules and regulations, or both.

(3) It shall be the duty of the Attorney General or the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of a violation or threatened violation, to institute pursue appropriate proceedings, ~~either criminal, injunctive, or both,~~ without delay pursuant to this section, subdivision (6) of section 2-1091, or subsection (3) of section 24 of this act or any combination thereof. ~~Before the department reports a violation, an opportunity shall be given to the person against whom proceedings will be brought to present such person's views to the department as set forth in the Administrative Procedure Act.~~

(4) Any person adversely affected by an order made by the department pursuant to the Plant Protection and Plant Pest Act may appeal such order, and the appeal shall be in accordance with the

Administrative Procedure Act.

Sec. 30. A political subdivision shall not enact an ordinance or resolution which is in conflict with the Plant Protection and Plant Pest Act.

Sec. 31. That section 2-10,116, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-10,116. The department shall have authority to adopt and promulgate such rules and regulations as are necessary to the effective discharge of its duties under the Plant Protection and Plant Pest Act. The rules and regulations may include, but shall not be limited to, provisions governing:

- (1) The issuance and revocation of licenses as authorized by the Plant Protection and Plant Pest Act;
- (2) The assessment and collection of license, inspection, reinspection, and delinquent fees;
- (3) The withdrawal from distribution of nursery stock;
- (4) The care, viability, and standards for nursery stock;
- (5) The labeling and shipment of nursery stock;
- (6) The issuance and release of plant pest quarantines and withdrawal-from-distribution orders;
- (7) The establishment of a restricted plant pest list;
- (8) The preparation, maintenance, handling, and filing of reports by persons subject to the act; and
- (9) The adoption of the American Association of Nurserymen's American Standard for Nursery Stock insofar as it does not conflict with any provision of the act; and
- (10) Factors to be considered when the director issues an order imposing an administrative fine.

Sec. 32. All inspection fees, reinspection fees, and delinquent fees shall be due and payable upon the department's notification of the licensee of the amount of such fees due. The department may impose additional penalty fees after the fees are more than one month late. The penalty fees shall not exceed twenty percent of the fees due for each month such fees are late.

Sec. 33. That section 2-10,117, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-10,117. All money received from any source pursuant to the Plant Protection and Plant Pest Act shall be remitted by the department to the State Treasurer and by the State Treasurer credited to the Plant Protection and Plant Pest Cash Fund which is hereby created. The fund shall be used by the department to aid in defraying the expenses of administering the ~~Plant Protection and Plant Pest Act act.~~ ~~Any money in the Insect Pest and Plant Disease Administrative Cash Fund on October 1, 1988, shall be transferred to the Plant Protection and Plant Pest Cash Fund.~~ Any money in the ~~Plant Protection and Plant Pest Cash Fund~~ fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to ~~72-1269~~ 72-1276.

Sec. 34. That original sections 2-1072, 2-1074, 2-1075,

2-1079, 2-1091, 2-1092, 2-1094, 2-1095, 2-1097, 2-1099, 2-10,100, 2-10,101, 2-10,103, 2-10,105, 2-10,113, 2-10,115, 2-10,116, and 2-10,117, Reissue Revised Statutes of Nebraska, 1943, are repealed.