

LEGISLATIVE BILL 874

Approved by the Governor April 13, 2006

Introduced by Kremer, 34

AN ACT relating to agriculture; to amend section 2-2651, Reissue Revised Statutes of Nebraska, and sections 2-15,122, 2-2624, 2-2626, 2-2627, 2-2629, 2-2634, 2-2636, 2-2638, 2-2639, 2-2641, 2-2643.03, 2-2646, and 2-2649, Revised Statutes Cumulative Supplement, 2004; to change provisions of the Pesticide Act; to provide for electronic format for application information; to provide, change, and eliminate provisions relating to distribution of funds under the act; to provide for reciprocal licensure; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 2-15,122, Revised Statutes Cumulative Supplement, 2004, is amended to read:

2-15,122 There is hereby created the Natural Resources Water Quality Fund. The State Treasurer shall credit to the fund for the uses and purposes of section 2-15,123 such money as is specifically appropriated, such funds, fees, donations, gifts, services, or devises or bequests of real or personal property received by the department from any source, federal, state, public, or private, to be used by the department for the purpose of funding programs listed in subsection (2) of section 2-15,123, and such money credited under sections ~~2-2627~~, 2-2634, 2-2638, and 2-2641. The department shall allocate money from the fund pursuant to section 2-15,123. The fund shall be exempt from provisions relating to lapsing of appropriations, and the unexpended and unencumbered balance existing in the fund on June 30 each year shall be reappropriated. ~~It is the intent of the Legislature to study and review the funding changes made by Laws 2001, LB 329, before January 1, 2005.~~ Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 2. Section 2-2624, Revised Statutes Cumulative Supplement, 2004, is amended to read:

2-2624 For purposes of the Pesticide Act:

(1) Active ingredient means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;

(b) In the case of a plant regulator, an ingredient that, through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or a product of an ornamental or crop plant;

(c) In the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or

(d) In the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue;

(2) Administrator means the Administrator of the United States Environmental Protection Agency;

(3) Adulterated means:

(a) That the strength or purity of a pesticide falls below the professed standard of quality as expressed on the labeling under which a pesticide is sold;

(b) That any substance is substituted wholly or in part for the pesticide; or

(c) That any valuable constituent of the pesticide has been wholly or in part abstracted;

(4) Animal means a vertebrate or invertebrate species, including humans, other mammals, birds, fish, and shellfish;

(5) Antidote means a practical treatment used in preventing or lessening ill effects from poisoning, including first aid;

(6) Biological control agent means any living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism;

(7) Bulk means any distribution of a pesticide in a refillable container designed and constructed to accommodate the return and refill of greater than fifty-five gallons of liquid measure or one hundred pounds of dry net weight of the product;

(8) Commercial applicator means any applicator required by the act

to obtain a commercial applicator license;

(9) Dealer means any manufacturer, registrant, or distributor who is required to be licensed as such under section 2-2635;

(10) Defoliant means a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;

(11) Department means the Department of Agriculture;

(12) Desiccant means a substance or mixture of substances intended to artificially accelerate the drying of plant tissue;

(13) Device means an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a pest or other form of plant or animal life, other than a human or a bacteria, virus, or other microorganism on or in living humans or other living animals. Device does not include equipment intended to be used for the application of pesticides when sold separately from a pesticide;

(14) Director means the Director of Agriculture or his or her designee;

(15) Distribute means to offer for sale, hold for sale, sell, barter, exchange, supply, deliver, offer to deliver, ship, hold for shipment, deliver for shipment, or release for shipment;

(16) Environment includes water, air, land, plants, humans, and other animals living in or on water, air, or land and interrelationships which exist among these;

(17) Federal act means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and any regulations adopted and promulgated under it, as the act and regulations existed on July 20, 2002 January 1, 2006;

(18) Federal agency means the United States Environmental Protection Agency;

(19) Fungus means any non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, yeast, and bacteria, but does not include non-chlorophyll-bearing thallophytes on or in living humans or other living animals or those on or in a processed food or beverage or pharmaceuticals;

(20) Inert ingredient means an ingredient that is not an active ingredient;

(21) Ingredient statement means a statement which contains the name and percentage of each active ingredient and the total percentage of all inert ingredients in the pesticide. If the pesticide contains arsenic in any form, a statement of the percentage of total water-soluble arsenic calculated as elementary arsenic shall be included;

(22) Insect means any of the numerous small invertebrate animals generally having a segmented body and for the most part belong to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies. Insect includes allied classes of arthropods, the members of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice;

(23) Label means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers;

(24) Labeling means all labels and any other written, printed, or graphic matter (a) accompanying the pesticide or device at any time or (b) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, except accurate, nonmisleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides;

(25) License holder means any person licensed under the Pesticide Act;

(26) Licensed certified applicator means any person licensed and certified under the act as a commercial applicator, noncommercial applicator, or private applicator;

(27) Misbranded means that any pesticide meets one or more of the following criteria:

(a) Its labeling bears any statement, design, or graphic representation relative to the pesticide or to its ingredients which is false or misleading in any particular;

(b) It is contained in a package or other container or wrapping which does not conform to the standards established by the administrator pursuant to section 136w(c) of the federal act;

(c) It is an imitation of or distributed under the name of another pesticide;

(d) Its label does not bear the registration number assigned under section 136e of the federal act to each establishment in which it was produced;

(e) Any word, statement, or other information required by or under authority of the Pesticide Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(f) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of the federal act, are adequate to protect health and the environment;

(g) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under the Pesticide Act or section 136a(d) of the federal act, is adequate to protect health and the environment;

(h) In the case of a pesticide not registered in accordance with sections 2-2628 and 2-2629 and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the words Not Registered for Use in the United States of America;

(i) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail package, if any, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subdivision if:

(i) The size or form of the immediate container or the outside container or wrapper of the retail package makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) The ingredient statement appears prominently on another part of the immediate container or outside container or wrapper, permitted by the administrator;

(j) The labeling does not contain a statement of the use classification under which the product is registered;

(k) There is not affixed to its container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the producer, registrant, or person for whom produced;

(ii) The name, brand, or trademark under which the pesticide is sold;

(iii) The net weight or measure of the content, except that the administrator may permit reasonable variations; and

(iv) When required by regulations of the administrator to effectuate the purposes of the federal act, the registration number assigned to the pesticide under such act and the use classification; or

(l) The pesticide contains any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by the Pesticide Act:

(i) The skull and crossbones;

(ii) The word poison prominently in red on a background of distinctly contrasting color; and

(iii) A statement of a practical first-aid or other treatment in case of poisoning by the pesticide;

(28) Nematode means an invertebrate animal of the phylum Nematelminthes and class Nematode, an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle, inhabiting soil, water, plants, or plant parts;

(29) Noncommercial applicator means (a) any applicator who is not a commercial applicator and uses restricted-use pesticides only on property owned or controlled by his or her employer or for a federal entity or state agency or a political subdivision of the state or (b) any employee or ~~agent~~ other person acting on behalf of a political subdivision of the state who is not a commercial applicator who uses pesticides for outdoor vector control;

(30) Person means any individual, partnership, limited liability company, association, corporation, or organized group of persons, whether incorporated or not;

(31) Pest means:

(a) Any insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life, excluding humans; or

(b) Any virus, bacteria, or other microorganism, other than a virus, bacteria, or microorganism in or on living humans or other living animals, as defined by the department;

(32) Pesticide means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, including any biological control agent. Pesticide includes specialty pesticides. Pesticide does not include any article that is a new animal drug within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(v), as the section existed on July 20, 2002 January 1, 2006, that has been determined by the Secretary of Health and Human Services to be a new animal drug by regulation establishing conditions of use for the article, or that is an animal feed within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(w), as the section existed on July 20, 2002 January 1, 2006, bearing or containing a new animal drug;

(33) Pesticide management plan means a state management plan for a specific, identified pesticide to implement a strategy to prevent, monitor, evaluate, and mitigate (a) any occurrence of the pesticide or pesticide breakdown products in ground water and surface water in the state or (b) any other unreasonable adverse effect of the pesticide on humans or the environment;

(34) Plant regulator means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant but does not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment;

(35) Pollute means to alter the physical, chemical, or biological quality of or to contaminate water in the state, which alteration or contamination renders the water harmful, detrimental, or injurious to humans, the environment, or the public health, safety, or welfare;

(36) Private applicator means an applicator who is not a commercial applicator or a noncommercial applicator and uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person;

(37) Property means any land or water area, including airspace, and any plant, animal, structure, building, contrivance, commodity, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any vehicle used for transportation;

(38) Restricted-use pesticide means a pesticide classified as a restricted-use pesticide by the federal agency, a state-limited-use pesticide, or any pesticide receiving for which an exemption under section 136p of the federal act has been granted;

(39) Specialty pesticide means (a) a disinfectant, sanitizer, germicide, or biocide or (b) a pesticide labeled solely for use directly on humans or pets or in, on, or around areas associated with the household or home life, including lawn and garden and ornamental uses, but does not include turf as determined by the director;

(40) State management plan means a generic plan developed by the department to implement a strategy to prevent, monitor, evaluate, and mitigate any occurrence of pesticides in ground water and surface water in the state and any specific plans developed when an occurrence has been detected;

(41) State pesticide plan means the plan developed by the department to enter into a cooperative agreement with the federal agency to assume the responsibility for the primary enforcement of pesticide use and the training and licensing of certified applicators;

(42) State-limited-use pesticide means any pesticide included on a list of state-limited-use pesticides by the department pursuant to the state a pesticide management plan;

(43) Unreasonable adverse effect on humans or the environment means any unreasonable risk to humans or the environment taking into account the severity and longevity of adverse effects of use of the pesticide and also taking into account the economic, social, and environmental costs and benefits of the use of the pesticide. The costs and benefits of a public health pesticide shall also weigh any risks of the use of the pesticide against the

health risks to be mitigated or controlled by the use of the pesticide;

~~(43)~~ (44) Vector means any organism capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including mosquitoes, flies, fleas, cockroaches, ticks, mites, other insects, mice, and rats; and

~~(44)~~ (45) Weed means any plant that grows where not wanted.

Sec. 3. Section 2-2626, Revised Statutes Cumulative Supplement, 2004, is amended to read:

2-2626 The department shall have the following powers, functions, and duties:

(1) To administer, implement, and enforce the Pesticide Act and serve as the lead state agency for the regulation of pesticides. The department shall involve the natural resources districts and other state agencies, including the Department of Environmental Quality, the Department of Natural Resources, or the Department of Health and Human Services Regulation and Licensure, in matters relating to water quality. Nothing in the act shall be interpreted in any way to affect the powers of any other state agency or of any natural resources district to regulate for ground water quality or surface water quality as otherwise provided by law;

(2) To be responsible for the development and implementation of a state management plan and pesticide management plans ~~for the prevention, evaluation, and mitigation of occurrences of pesticides or pesticide breakdown products in ground water and surface water of the state.~~ The Department of Environmental Quality shall be responsible for the adoption of standards for pesticides in surface water and ground water, and the Department of Health and Human Services Regulation and Licensure shall be responsible for the adoption of standards for pesticides in drinking water. These standards shall be established as action levels in the state management plan and pesticide management plans at which prevention and mitigation measures are implemented. Such action levels may be set at or below the maximum contaminant level set for any product as set by the federal agency under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the act existed on ~~July 20, 2002~~ January 1, 2006. The department shall cooperate with and use existing expertise in other state agencies when developing the state management plan and pesticide management plans and shall not hire a hydrologist within the department for such purpose; ~~As part of the state management plan and after~~

(3) After notice and public hearing, ~~the department may to~~ adopt and promulgate rules and regulations providing lists of state-limited-use pesticides for the entire state or for a designated area within the state, subject to the following:

(a) A pesticide ~~may~~ shall be included on a list of state-limited-use pesticides if:

(i) The department determines that the pesticide, when used in accordance with its directions for use, warnings, and cautions and for uses for which it is registered, may without additional regulatory restrictions cause unreasonable adverse effects on humans or the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticides;

(ii) The water quality standards set by the Department of Environmental Quality or the Department of Health and Human Services Regulation and Licensure pursuant to this section are exceeded; or

(iii) The department determines that the pesticide requires additional restrictions to meet the requirements of the Pesticide Act, the federal act, or any plan adopted under the Pesticide Act or the federal act;

(b) The department may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or possessed only:

(i) With permission of the department;

(ii) Under direct supervision of the department or its designee in certain areas and under certain conditions;

(iii) In specified quantities and concentrations or at specified times; or

(iv) According to such other restrictions as the department may set by regulation;

(c) The department may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records;

(d) The state management plan and pesticide management plans shall be coordinated with the department and other state agency plans and with other state agencies and with natural resources districts; ~~and~~

(e) The state management plan and pesticide management plans

may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environmental Quality or the Department of Health and Human Services Regulation and Licensure; and

(f) A pesticide management plan may impose progressively more rigorous pesticide management practices to address any unreasonable adverse effect of pesticides on humans or the environment. When appropriate, a pesticide management plan may establish action levels for imposition of such progressively more rigorous management practices based upon measurable indicators of the adverse effect on humans or the environment;

~~(3)~~ (4) To adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Pesticide Act. The regulations shall include, but not be limited to, regulations providing for:

(a) The collection of samples, examination of records, and reporting of information by persons subject to the act;

(b) The safe handling, transportation, storage, display, distribution, use, and disposal of pesticides and their containers;

(c) Labeling requirements of all pesticides required to be registered under provisions of the act, except that such regulations shall not impose any requirements for federally registered labels contrary to those required pursuant to the federal act;

(d) Classes of devices which shall be subject to the Pesticide Act;

(e) Reporting and record-keeping requirements for persons distributing or using pesticide products made available under section 136p of the federal act and for persons required to keep records under the Pesticide Act;

(f) Methods to be used in the application of pesticides when the department finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Act. Such regulations may include methods to be used in the application of a restricted-use pesticide, may relate to the time, place, manner, methods, materials, amounts, and concentrations in connection with the use of the pesticide, may restrict or prohibit use of the pesticides in designated areas during specified periods of time, and may provide specific examples and technical interpretations of subdivision (4) of section 2-2646. The regulations shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to (i) plants, including forage plants, or adjacent or nearby property, (ii) wildlife in the adjoining or nearby areas, (iii) fish and other aquatic life in waters in reasonable proximity to the area to be treated, (iv) surface water or ground water, and (v) humans, animals, or beneficial insects. In adopting and promulgating such regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, or other reliable sources. The department may, by regulation, require that notice of a proposed use of a pesticide be given to landowners whose property is adjacent to the property to be treated or in the immediate vicinity thereof if the department finds that such notice is necessary to carry out the purpose of the act;

(g) State-limited-use pesticides for the state or for designated areas in the state;

(h) Establishment of the amount of any fee or fine as directed by the act;

(i) Establishment of the components of any state management plan or pesticide management plan;

(j) Establishment of categories for licensed pesticide applicators in addition to those established in 40 C.F.R. 171, as the regulation existed on ~~July 20, 2002~~ January 1, 2006; and

(k) Establishment of a process for the issuance of permits for emergency-use pesticides made available under section 136p of the federal act;

~~(4)~~ (5) To enter any public or private premises at any reasonable time to:

(a) Inspect and sample any equipment authorized or required to be inspected under the Pesticide Act or to inspect the premises on which the equipment is kept or stored;

(b) Inspect or sample any area exposed or reported to be exposed to a pesticide or where a pesticide use has occurred;

(c) Inspect and sample any area where a pesticide is disposed of or stored;

(d) Observe the use and application of and sample any pesticide;

(e) Inspect and copy any records relating to the distribution or use of any pesticide or the issuance of any license, permit, or registration under the act; or

(f) Inspect, examine, or take samples from any building or place

owned, controlled, or operated by a registrant, licensed certified applicator, or dealer if, from probable cause, it appears that the building or place contains a pesticide;

~~(5)~~ (6) To sample, inspect, make analysis of, and test any pesticide found within this state;

~~(6)~~ (7) To issue and enforce a written or printed order to stop the sale, removal, or use of a pesticide if the department has reason to believe that the pesticide is in violation of any provision of the act. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order shall not distribute, remove, or use the pesticide until the department determines that the pesticide is in compliance with the act. This subdivision shall not limit the right of the department to proceed as authorized by any other provision of the act;

~~(7)~~~~(a)~~ (8) (a) To sue in the name of the director to enjoin any violation of the act. Venue for such action shall be in the county in which the alleged violation occurred, is occurring, or is threatening to occur; and

(b) To request the county attorney or the Attorney General to bring suit to enjoin a violation or threatened violation of the act;

~~(8)~~ (9) To impose or levy an administrative fine of not more than five thousand dollars on any person who has violated the provisions, requirements, conditions, limitations, or duties imposed by the act or rules and regulations adopted and promulgated pursuant to the act. A violation means any separate activity or day in which an activity takes place;

~~(9)~~ (10) To cause a violation warning letter to be served upon the alleged violator or violators pursuant to the act;

~~(10)~~ (11) To take measures necessary to ensure that all fees, fines, and penalties prescribed by the act and the rules or regulations adopted under the act are assessed and collected;

~~(11)~~ (12) To access, inspect, and copy all books, papers, records, bills of lading, invoices, and other information relating to the use, manufacture, repackaging, and distribution of pesticides necessary for the enforcement of the act;

~~(12)~~ (13) To seize, for use as evidence, without formal warrant if probable cause exists, any pesticide which is in violation of the act or is not approved by the department or which is found to be used or distributed in the violation of the act or the rules and regulations adopted and promulgated under it;

~~(13)~~ (14) To declare as a pest any form of plant or animal life, other than humans and other than bacteria, viruses, and other microorganisms on or in living humans or other living animals, which is injurious to health or the environment;

~~(14)~~ (15) To adopt classifications of restricted-use pesticides as determined by the federal agency under the federal act. In addition to the restricted-use pesticides classified by the administrator, the department may also determine state-limited-use pesticides for the state or for designated areas within the state as provided in subdivision ~~(2)~~ (3) of this section;

~~(15)~~ (16) To receive grants-in-aid from any federal entity, and to enter into cooperative agreements with any federal entity, any agency of this state, any subdivision of this state, any agency of another state, any Indian tribe, or any private person for the purpose of obtaining consistency with or assistance in the implementation of the Pesticide Act. The department may reimburse any such entity from the Pesticide Administrative Cash Fund for the work performed under the cooperative agreement. The department may delegate its administrative responsibilities under the act to cities of the metropolitan and primary classes if it reasonably believes that such cities can perform the responsibilities in a manner consistent with the act and the rules and regulations adopted and promulgated under it;

~~(16)~~ (17) To prepare and adopt such plans as are necessary to implement any requirements of the federal agency under the federal act;

~~(17)~~ (18) To request the assistance of the Attorney General or the county attorney in the county in which a violation of the Pesticide Act has occurred with the prosecution or enforcement of any violation of the act;

~~(18)~~ (19) To enter into a settlement agreement with any person regarding the disposition of any license, permit, registration, or administrative fine;

~~(19)~~ (20) To issue a cease and desist order pursuant to section 2-2649;

~~(20)~~ (21) To deny an application or cancel, suspend, or modify the registration of a pesticide pursuant to section 2-2632;

~~(21)~~ (22) To issue, cancel, suspend, modify, or place on probation any license or permit issued pursuant to the act; and

~~(22)~~ (23) To make such reports to the federal agency as are required

under the federal act.

Sec. 4. Section 2-2627, Revised Statutes Cumulative Supplement, 2004, is amended to read:

2-2627 ~~(1) Except as otherwise provided in the Pesticide Act, all money received from any source pursuant to the act shall be remitted by the department to the State Treasurer for credit to the Natural Resources Water Quality Fund.~~

~~(2) The Pesticide Administrative Cash Fund is hereby created. The fund shall be used by the department to aid in defraying the expenses of administering the act, except that on or before July 15, 2001, the State Treasurer shall transfer one million dollars from the Pesticide Administrative Cash Fund to the Natural Resources Water Quality Fund. Any money in the Pesticide Administrative Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.~~

Sec. 5. Section 2-2629, Revised Statutes Cumulative Supplement, 2004, is amended to read:

2-2629 (1) The application for registration of a pesticide shall include:

(a) The name and address of the applicant and the name and address of the person whose name shall appear on the pesticide label, if not the applicant's;

(b) The name of the pesticide;

(c) Two complete copies of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use;

(d) The use classification, whether for restricted or general use, as provided by the federal act;

(e) The use classification proposed by the applicant, including whether the product is a specialty pesticide, if the pesticide is not required by federal law to be registered under a use classification;

(f) A designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state; and

(g) Other information required by the department for determining the eligibility for registration.

(2) Application information may be provided in electronic format acceptable to the department.

(3) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.

~~(3) (4) The department may require a full description of the tests made and the results of the tests on which claims are based before approving registration of a pesticide that is not registered under the federal act or for which federal or state restrictions on use are being considered.~~

~~(4) (5) Information collected under subsection ~~(2)~~ or (3) or (4) of this section shall not be public records. The department shall not reveal such information to other than representatives of the department, the Attorney General or other legal representative of the department when relevant in any judicial proceeding, or any other officials of another Nebraska agency, the federal government, or other states who are similarly prohibited from revealing this information.~~

Sec. 6. Section 2-2634, Revised Statutes Cumulative Supplement, 2004, is amended to read:

2-2634 (1) As a condition to registration or renewal of registration as required by sections 2-2628 to 2-2633, an applicant shall pay to the department a fee of two hundred dollars for each pesticide to be registered that is not classified as a specialty pesticide by the department and one hundred thirty-five dollars for each pesticide to be registered that is classified as a specialty pesticide by the department, except that the fee may be increased by the director after a public hearing is held outlining the reason for any proposed change in the fee. In no event shall such fee exceed two hundred ten dollars for each pesticide to be registered. All fees collected shall be remitted to the State Treasurer for credit as follows:

(a) Thirty dollars of each such fee to the Noxious Weed Cash Fund as provided in section 2-958;

(b) Sixty dollars of each such fee to the Buffer Strip Incentive Fund as provided in section 2-5106; and

(c) The remainder of each such fee for a pesticide that is not classified as a specialty pesticide, if any, to the Natural Resources Water

Quality Fund, and the remainder of each such fee for a pesticide that is classified as a specialty pesticide, if any, to the Pesticide Administrative Cash Fund.

(2) If a person fails to apply for renewal of registration before January 1 of any year, such person, as a condition to renewal, shall pay a late registration fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, for each product to be renewed in addition to the renewal fee. The purpose of the late registration fee is to cover the administrative costs associated with collecting fees, and all money collected as a late registration fee shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

Sec. 7. Section 2-2636, Revised Statutes Cumulative Supplement, 2004, is amended to read:

2-2636 (1) The department shall license pesticide applicators involved in the categories established in 40 C.F.R. 171, as the regulation existed on ~~July 20, 2002~~ January 1, 2006, and any other categories established pursuant to rules and regulations necessary to meet the requirements of the state. The department may issue a reciprocal license to a pesticide applicator licensed or certified in another state or by a federal agency. The department may waive part or all of any license certification examination requirements for a reciprocal license if the other state or federal agency that licensed or certified the pesticide applicator has substantially the same certification examination standards and procedural requirements as required under the Pesticide Act.

(2) A person shall not use a restricted-use pesticide unless the person is:

(a) Licensed as a commercial or noncommercial applicator and authorized by the license to use the restricted-use pesticide in the category covering the proposed pesticide use;

(b) Licensed as a private applicator; or

(c) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(3) A person shall not use lawn care or structural pest control pesticides on the property of another person for hire or compensation unless the person is:

(a) Licensed as a commercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(4) An employee or other person acting on behalf of any political subdivision of the state shall not use pesticides for outdoor vector control unless the employee applicator is:

(a) Licensed as a commercial applicator or a noncommercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(5) In order to receive a commercial, noncommercial, or private applicator license, a person shall be at least sixteen years of age.

~~(6) The department may waive part or all of any license certification examination requirements on a reciprocal basis with any other state or federal agency that has substantially the same certification examination standards and procedural requirements.~~

Sec. 8. Section 2-2638, Revised Statutes Cumulative Supplement, 2004, is amended to read:

2-2638 (1) An individual who uses restricted-use pesticides on the property of another person in the State of Nebraska for hire or compensation shall meet all certification requirements of the Pesticide Act and apply to the department for shall be a commercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Any person who uses lawn care or structural pest control pesticides on the property of another person in the State of Nebraska for hire or compensation shall apply to the department for shall be a commercial applicator license holder, regardless of whether such person uses any restricted-use pesticide.

(3) Application for an original or renewal commercial applicator license shall be made to the department on forms prescribed by the department. The application shall include information as required by the director and be accompanied by a license fee of ninety dollars. If the applicant is an individual, the application shall include the applicant's social security

number. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred fifty dollars per license. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

(4) The department may deny a commercial applicator license if it has determined that:

(a) The applicant has had a license as a licensed certified applicator issued by this state or another state revoked within the last two years;

(b) The applicant has been unable to satisfactorily fulfill certification or licensing requirements;

(c) The applicant for any other reason cannot be expected to be able to fulfill the provisions of the Pesticide Act applicable to the category for which application is made; or

(d) An applicant for an original commercial applicator license has not passed an examination under sections 2-2637 and 2-2640.

(5) An individual to whom a commercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(6) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state.

Sec. 9. Section 2-2639, Revised Statutes Cumulative Supplement, 2004, is amended to read:

2-2639 (1) A noncommercial applicator shall meet all certification requirements of the Pesticide Act and ~~apply to the department for~~ shall be a noncommercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Application for an original or renewal noncommercial applicator license shall be made to the department on forms prescribed by the department. If the applicant is an individual, the application shall include the applicant's social security number. The department shall not charge a noncommercial applicant a license fee.

(3) The director shall not issue an original noncommercial applicator license before the applicant has passed an examination under sections 2-2637 and 2-2640.

(4) A person to whom a noncommercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(5) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

Sec. 10. Section 2-2641, Revised Statutes Cumulative Supplement, 2004, is amended to read:

2-2641 (1) A person shall be deemed to be a private applicator if the person uses a restricted-use pesticide in the State of Nebraska for the purpose of producing an agricultural commodity:

(a) On property owned or rented by the person or person's employer or under the person's general control; or

(b) On the property of another person if applied without compensation other than the trading of personal services between producers of agricultural commodities.

(2) An employee shall qualify as a private applicator under subdivision (1)(a) of this section only if he or she provides labor for the pesticide use but does not provide the necessary equipment or pesticides.

(3) Every person applying for a license as a private applicator shall meet the certification requirement of (a) undertaking a training session approved by the department or (b) passing an examination showing that the person is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility. The examination shall be approved by the department and monitored by the department or its authorized agent. If the applicant is an individual, the application shall include the applicant's social security

number.

(4) Application for an original or renewal private applicator license shall be made to the department and accompanied by a license fee of twenty-five dollars. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

Sec. 11. Section 2-2643.03, Revised Statutes Cumulative Supplement, 2004, is amended to read:

2-2643.03 (1) A license holder may be put 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 subdivision ~~(8)~~ (9) of section 2-2626 after: (a) The director determines the license holder has not complied with section 2-2643.02; (b) the license holder is given written notice to comply and written notice of the right to a hearing to show cause why an order should not be issued; and (c) the director finds that issuing an order is appropriate based on the hearing record or on the available information if the hearing is waived by the license holder.

(2) A license issued under the Pesticide Act may be modified or suspended until the license holder complies with the conditions set out in an order issued by the director or for a specific period of time after: (a) The director determines the license holder has not complied with section 2-2643.02; (b) the license holder is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be modified or suspended; and (c) the director finds that issuing an order modifying or suspending the license is appropriate based on the hearing record or on the available information if the hearing is waived by the license holder.

(3) A license may be immediately suspended prior to hearing if: (a) The director determines an immediate danger to the public health, safety, or welfare exists; and (b) the license holder receives the written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. If a license is suspended under this subsection, the license holder may request a date and time for hearing. The director shall accommodate the requested date and time, if possible. In any event, if the license holder requests that the hearing be held within two business days, the director shall set the date and time for the hearing within two business days of the request. If a license holder does not request a hearing date within fifteen days after the suspension, the director shall establish a hearing date and shall notify the license holder of the date and time of such hearing.

(4) A license may be revoked after: (a) The director determines the license holder has committed serious, repeated, or multiple violations of any of the requirements of section 2-2643.02; (b) the license holder 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 license holder.

(5) Any license holder who has a license which has been suspended shall cease operating as a license holder until the license is reinstated. Any license holder who has a license which has been revoked shall cease operating as a license holder until a new license is issued.

(6) The director may terminate any proceedings to suspend or revoke a license or to subject a license holder to an order of the director at any time if the reasons for such proceedings 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 license holder may no longer be subject to an order of the director if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(7) Proceedings for license modification, suspension, revocation, or probation shall not preclude the department from pursuing other administrative, civil, or criminal actions.

Sec. 12. Section 2-2646, Revised Statutes Cumulative Supplement, 2004, is amended to read:

2-2646 It shall be unlawful for any person:

(1) To distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through a point outside this state, any of the following:

(a) A pesticide that has not been registered or whose registration has been canceled or suspended under the Pesticide Act;

(b) A pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its

registration;

(c) A pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by the act and any regulations adopted under the act;

(d) A pesticide that is adulterated;

(e) A pesticide or device that is misbranded;

(f) A pesticide in a container that is unsafe due to damage;

(g) A pesticide which differs from its composition as registered; or

(h) A pesticide that has not been colored or discolored as required by the Pesticide Act or the federal act;

(2) To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for by the Pesticide Act or a rule or regulation adopted under the act;

(3) To add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the act or any rule or regulation adopted and promulgated under the act;

(4) To use or cause to be used a pesticide contrary to the act, to the labeling of the pesticide, or to a rule or regulation of the department limiting the use of the pesticide, except that it shall not be unlawful to:

(a) Use a pesticide at any dosage, concentration, or frequency less than that specified or recommended on the labeling if the labeling does not specifically prohibit deviation from the specified or recommended dosage, concentration, or frequency or, if the pesticide is a termiticide, it is not used at a rate below the minimum concentration specified or recommended on the label for preconstruction treatments;

(b) Use a pesticide against any target pest not specified on the labeling if the use is for the crop, animal, or site specified or recommended on the labeling and the labeling does not specifically state that the pesticide may be used only for the pests specified or recommended on the labeling;

(c) Employ any method of use not prohibited by the labeling if (i) the labeling does not specifically state that the product may be used only by the methods specified or recommended on the labeling, (ii) the method of use is consistent with the method specified on labeling, and (iii) the method of use does not more than minimally increase the exposure of the pesticide to humans or the environment;

(d) Mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling if such mixing is consistent with the method of application specified or recommended on the labeling and does not more than minimally increase the exposure of the pesticide to humans or the environment;

(e) Use a pesticide in conformance with section 136c, 136p, or 136v of the federal act or section 2-2626; or

(f) Use a pesticide in a manner that the director determines to be consistent with the purposes of the Pesticide Act;

(5) To use a pesticide at any dosage, concentration, or frequency greater than specified or recommended on the labeling unless the labeling allows the greater dosage, concentration, or frequency;

(6) To handle, transport, store, display, or distribute a pesticide in a manner that violates any provision of the Pesticide Act or a rule or regulation adopted and promulgated under the act;

(7) To use, cause to be used, dispose, discard, or store a pesticide or pesticide container in a manner that the person knows or should know is:

(a) Likely to adversely affect or cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects;

(b) Likely to pollute a water supply or waterway; or

(c) A violation of the Environmental Protection Act or a rule or regulation adopted and promulgated pursuant to the act;

(8) To use for the person's advantage or reveal, other than to a properly designated state or federal official or employee, to a physician, or in an emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under the Pesticide Act and marked as privileged or confidential by the registrant;

(9) To commit an act for which a licensed certified applicator's license may be suspended, modified, revoked, or placed on probation under the Pesticide Act;

(10) To knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide in a manner that causes bodily injury to or the death of a human or that pollutes ground water, surface water, or a water supply;

(11) To fail to pay all fees and penalties as prescribed by the act

and the rules and regulations adopted and promulgated pursuant to the act;

(12) To fail to keep or refuse to make available for examination and copying by the department all books, papers, records, and other information necessary for the enforcement of the act;

(13) To hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(14) To violate any state management plan or pesticide management plan developed or approved by the department;

(15) To distribute or advertise any restricted-use pesticide for some other purpose other than in accordance with the Pesticide Act and the federal act;

(16) To use any pesticide which is under an experimental-use or emergency-use permit which is contrary to the provisions of such permit;

(17) To fail to follow any order of the department;

(18) Except as authorized by law, to knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide on property without the permission of the owner or lawful tenant. Applications for outdoor vector control authorized by a federal or state agency or political subdivision shall not be in violation of this subdivision when the application is made from public access property and cannot practically be confined to public property;

(19) To knowingly falsify all or part of any application for registration or licensing or any other records required to be maintained pursuant to the Pesticide Act; and

(20) To violate any other provision of the act.

Sec. 13. Section 2-2649, Revised Statutes Cumulative Supplement, 2004, is amended to read:

2-2649 Whenever the director has reason to believe that any person has violated any provision of the Pesticide Act, any rule or regulation adopted and promulgated pursuant to the act, or any order of the department, the director may issue a notice of hearing as provided for in section 2-2649.02 requiring the person to appear before the director (1) to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. If after a hearing the director finds such person to be in violation of the act or the rules and regulations, he or she shall enter an order requiring the person to cease and desist from the specific act, practice, or omission, (2) to determine whether an administrative fine should be imposed or levied against the person pursuant to subdivision ~~(8)~~ (9) of section 2-2626, or (3) to determine whether the license of such person should be denied. Proceedings initiated pursuant to this section shall not preclude the department from pursuing other administrative, civil, or criminal actions.

Sec. 14. Section 2-2651, Reissue Revised Statutes of Nebraska, is amended to read:

2-2651 (1) All money collected as a civil or an administrative fine shall be remitted to the State Treasurer for ~~credit to the permanent school fund~~ distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any civil or administrative fine which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper forum 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.

Sec. 15. Original section 2-2651, Reissue Revised Statutes of Nebraska, and sections 2-15,122, 2-2624, 2-2626, 2-2627, 2-2629, 2-2634, 2-2636, 2-2638, 2-2639, 2-2641, 2-2643.03, 2-2646, and 2-2649, Revised Statutes Cumulative Supplement, 2004, are repealed.