

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 320

FINAL READING

Introduced by Albrecht, 17.

Read first time January 16, 2019

Committee: Agriculture

1 A BILL FOR AN ACT relating to the Pesticide Act; to amend sections
2 2-2628, 2-2630, 2-2632, 2-2637, 2-2640, 2-2643, 2-2643.02, 2-2645,
3 and 2-2653, Reissue Revised Statutes of Nebraska, and sections
4 2-2624, 2-2626, 2-2629, 2-2635, 2-2636, 2-2638, 2-2639, 2-2641,
5 2-2642, 2-2646, and 2-2656, Revised Statutes Cumulative Supplement,
6 2018; to redefine terms; to update federal references; to change
7 Department of Agriculture powers and duties; to change provisions
8 relating to registration requirements and applications, service of
9 process, labeling requirements, application fees, pesticide
10 applicator and restricted-use pesticide provisions, commercial,
11 noncommercial, and private applicator licenses, noncertified
12 applicator restrictions, records requirements, license holder
13 duties, violations, claims of damages, inspections, and prohibited
14 acts; to harmonize provisions; and to repeal the original sections.
15 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-2624, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 2-2624 For purposes of the Pesticide Act:

4 (1) Active ingredient means:

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

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

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

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

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

18 (3) Adulterated means:

19 (a) That the strength or concentration is not accurately ~~purity of a~~
20 ~~pesticide falls below the professed standard of quality as~~ expressed on
21 the labeling under which a pesticide is sold;

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

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

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

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

30 (6) Biological control agent means any living organism applied to or
31 introduced into the environment that is intended to function as a

1 pesticide against another organism;

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

6 (8) Commercial applicator means any applicator required by the act
7 to obtain a commercial applicator license;

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

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

13 (11) Department means the Department of Agriculture;

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

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

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

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

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

30 (17) Federal act means the Federal Insecticide, Fungicide, and
31 Rodenticide Act, 7 U.S.C. 136 et seq., and any regulations adopted and

1 promulgated under it, as the act and regulations existed on January 1,
2 2019 ~~2013~~;

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

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

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

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

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

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

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

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

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

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

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

11 (b) It is contained in a package or other container or wrapping
12 which does not conform to the standards established by the administrator
13 pursuant to 7 U.S.C. 136w(c) of the federal act;

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

16 (d) Its label does not bear the registration number assigned under 7
17 U.S.C. 136e of the federal act to each establishment in which it was
18 produced;

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

25 (f) The labeling accompanying it does not contain directions for use
26 which are necessary for effecting the purpose for which the product is
27 intended and if complied with, together with any requirements imposed
28 under 7 U.S.C. 136a(d) of the federal act, are adequate to protect health
29 and the environment;

30 (g) The label does not contain a danger, warning, symbol, or
31 cautionary ~~caution~~ statement which may be necessary and if complied with,

1 together with any requirements imposed under the Pesticide Act or 7
2 U.S.C. 136a(d) of the federal act, is adequate to protect health and the
3 environment;

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

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

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

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

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

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

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

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

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

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

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

11 (i) The skull and crossbones;

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

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

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

20 (29) Noncommercial applicator means (a) any applicator who is not a
21 commercial applicator or a private applicator and uses restricted-use
22 pesticides only on property owned or controlled by his or her employer or
23 for a federal entity, ~~or~~ state agency, ~~or~~ a political subdivision of the
24 state, or postsecondary educational institution in this state or (b) any
25 employee or other person acting on behalf of a political subdivision of
26 the state who is not a commercial applicator or a private applicator who
27 uses pesticides for outdoor vector control;

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

31 (31) Pest means any destructive, detrimental, or undesirable:

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

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

7 (32) Pesticide means a substance or mixture of substances intended
8 to prevent, destroy, repel, or mitigate any pest or any substance or
9 mixture of substances intended for use as a plant regulator, defoliant,
10 or desiccant, including any biological control agent. Pesticide does not
11 include any article that is a new animal drug within the meaning of the
12 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(v), as the section
13 existed on January 1, 2019 ~~2013~~, ~~that has been determined by the~~
14 ~~Secretary of Health and Human Services to be a new animal drug by~~
15 ~~regulation establishing conditions of use for the article, or that is an~~
16 ~~animal feed within the meaning of the Federal Food, Drug, and Cosmetic~~
17 ~~Act, 21 U.S.C. 321(w), as the section existed on January 1, 2013, bearing~~
18 ~~or containing a new animal drug;~~

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

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

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

5 (36) Private applicator means an applicator who is not a commercial
6 applicator or a noncommercial applicator and uses or supervises the use
7 of any restricted-use pesticide which is classified for restricted use
8 for purposes of producing any agricultural commodity on property owned,
9 or rented by, or under the general control of him or her or his or her
10 employer, or, if applied without compensation other than trading of
11 personal services between producers of agricultural commodities, on the
12 property of another person. To meet the definition of a private
13 applicator, an employee of an employer described under this subdivision
14 may only provide labor for the pesticide use. An employee who provides
15 restricted-use pesticides or equipment used to apply restricted-use
16 pesticides is a commercial applicator;

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

21 (38) Restricted-use pesticide means a pesticide classified as a
22 restricted-use pesticide by the federal agency, ~~a state limited-use~~
23 ~~pesticide,~~ or any pesticide for which an exemption under 7 U.S.C. section
24 136p of the federal act has been granted;

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

30 (40) State pesticide applicator certification plan means the plan
31 developed by the department to enter into a cooperative agreement with

1 the federal agency to assume the responsibility for the primary
2 enforcement of pesticide use and the training and licensing of certified
3 applicators;

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

7 (42) Unreasonable adverse effect on humans or the environment means
8 any unreasonable risk to humans or the environment taking into account
9 the severity and longevity of adverse effects of use of the pesticide and
10 also taking into account the economic, social, and environmental costs
11 and benefits of the use of the pesticide. The costs and benefits of a
12 ~~public health~~ pesticide used for public health purposes shall also weigh
13 any risks of the use of the pesticide against the health risks to be
14 mitigated or controlled by the use of the pesticide;

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

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

20 Sec. 2. Section 2-2626, Revised Statutes Cumulative Supplement,
21 2018, is amended to read:

22 2-2626 The department shall have the following powers, functions,
23 and duties:

24 (1) To administer, implement, and enforce the Pesticide Act and
25 serve as the lead state agency for the regulation of pesticides. The
26 department shall involve the natural resources districts and other state
27 agencies, including the Department of Environmental Quality, the
28 Department of Natural Resources, or the Department of Health and Human
29 Services, in matters relating to water quality. Nothing in the act shall
30 be interpreted in any way to affect the powers of any other state agency
31 or of any natural resources district to regulate for ground water quality

1 or surface water quality as otherwise provided by law;

2 (2) To be responsible for the development and implementation of a
3 state management plan and pesticide management plans. The Department of
4 Environmental Quality shall be responsible for the adoption of standards
5 for pesticides in surface water and ground water, and the Department of
6 Health and Human Services shall be responsible for the adoption of
7 standards for pesticides in drinking water. These standards shall be
8 established as action levels in the state management plan and pesticide
9 management plans at which prevention and mitigation measures are
10 implemented. Such action levels may be set at or below the maximum
11 contaminant level set for any product as set by the federal agency under
12 the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the act
13 existed on January 1, 2019 ~~2013~~. The Department of Agriculture shall
14 cooperate with and use existing expertise in other state agencies when
15 developing the state management plan and pesticide management plans and
16 shall not hire a hydrologist within the department for such purpose;

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

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

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

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

1 (iii) The Department of Agriculture determines that the pesticide
2 requires additional restrictions to meet the requirements of the
3 Pesticide Act, the federal act, or any plan adopted under the Pesticide
4 Act or the federal act;

5 (b) The Department of Agriculture may regulate the specific time,
6 locations, and conditions restricting the of use of a state-limited-use
7 pesticide, including allowable quantities or concentrations, and may
8 require that it be purchased or possessed only with : ~~(i) With permission~~
9 ~~or under the of the department;~~ ~~(ii) Under direct supervision of the~~
10 ~~department or its designee in certain areas and under certain conditions;~~

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

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

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

19 (d) The state management plan and pesticide management plans shall
20 be coordinated with the Department of Agriculture and other state agency
21 plans and with other state agencies and with natural resources districts;

22 (e) The state management plan and pesticide management plans may
23 impose progressively more rigorous pesticide management practices as
24 pesticides are detected in ground water or surface water at increasing
25 fractions of the standards adopted by the Department of Environmental
26 Quality or the Department of Health and Human Services; and

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

1 upon measurable indicators of the adverse effect on humans or the
2 environment;

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

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

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

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

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

16 (e) Reporting and record-keeping requirements for persons
17 distributing or using pesticide products made available under 7 U.S.C.
18 136i-1 of the federal act and for persons required to keep records under
19 the Pesticide Act;

20 (f) Methods to be used in the application of pesticides when the
21 Department of Agriculture finds that such regulations are necessary to
22 carry out the purpose and intent of the Pesticide Act. Such regulations
23 may include methods to be used in the application of a restricted-use
24 pesticide or state-limited-use pesticide, may relate to the time, place,
25 manner, methods, materials, amounts, and concentrations in connection
26 with the use of the pesticide, may restrict or prohibit use of the
27 pesticides in designated areas during specified periods of time, and may
28 provide specific examples and technical interpretations of subdivision

29 (4) of section 2-2646. The regulations shall encompass all reasonable
30 factors which the department deems necessary to prevent damage or injury
31 by drift or misapplication to (i) plants, including forage plants, or

1 adjacent or nearby property, (ii) wildlife in the adjoining or nearby
2 areas, (iii) fish and other aquatic life in waters in reasonable
3 proximity to the area to be treated, (iv) surface water or ground water,
4 and (v) humans, animals, or beneficial insects. In adopting and
5 promulgating such regulations, the department shall give consideration to
6 pertinent research findings and recommendations of other agencies of the
7 state, the federal government, or other reliable sources. The department
8 may, by regulation, require that notice of a proposed use of a pesticide
9 be given to landowners whose property is adjacent to the property to be
10 treated or in the immediate vicinity thereof if the department finds that
11 such notice is necessary to carry out the purpose of the act;

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

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

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

18 (j) Establishment of categories for licensed pesticide applicators
19 in addition to those established in 40 C.F.R. part 171, as such
20 regulations ~~the regulation~~ existed on January 1, 2019 ~~2013~~; and

21 (k) Establishment of a process for the issuance of permits for
22 emergency-use pesticides made available under 7 U.S.C. 136p of the
23 federal act;

24 (5) To enter any public or private premises at any reasonable time
25 to:

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

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

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

1 stored;

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

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

6 (f) Inspect, examine, or take samples from any application
7 equipment, building, or place owned, controlled, or operated by any
8 person engaging in an activity regulated by the act if, from probable
9 cause, it appears that the application equipment, building, or place
10 contains a pesticide;

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

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

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

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

27 (9) To impose or levy an administrative fine of not more than five
28 thousand dollars for each violation on any person who has violated any
29 provision, requirement, condition, limitation, or duty imposed by the act
30 or rules and regulations adopted and promulgated pursuant to the act. A
31 violation means each action which violates any separate or distinct

1 provision, requirement, condition, limitation, or duty imposed by the act
2 or rules and regulations adopted and promulgated pursuant to the act;

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

5 (11) To take reasonable measures to assess and collect all fees and
6 fines prescribed by the act and the rules or regulations adopted under
7 the act;

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

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

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

21 (14) ~~(15)~~ To adopt classifications of restricted-use pesticides as
22 determined by the federal agency under the federal act. In addition to
23 the restricted-use pesticides classified by the administrator, the
24 Department of Agriculture may also determine state-limited-use pesticides
25 for the state or for designated areas within the state as provided in
26 subdivision (3) of this section;

27 (15) ~~(16)~~ To receive grants-in-aid from any federal entity, and to
28 enter into cooperative agreements with any federal entity, any agency of
29 this state, any subdivision of this state, any agency of another state,
30 any Indian tribe, or any private person for the purpose of obtaining
31 consistency with or assistance in the implementation of the Pesticide

1 Act. The Department of Agriculture may reimburse any such entity from the
2 Pesticide Administrative Cash Fund for the work performed under the
3 cooperative agreement. The department may delegate its administrative
4 responsibilities under the act to cities of the metropolitan and primary
5 classes if it reasonably believes that such cities can perform the
6 responsibilities in a manner consistent with the act and the rules and
7 regulations adopted and promulgated under it;

8 ~~(16)~~ ~~(17)~~ To prepare and adopt such plans as are necessary to
9 implement any requirements of the federal agency under the federal act;

10 ~~(17)~~ ~~(18)~~ To request the assistance of the Attorney General or the
11 county attorney in the county in which a violation of the Pesticide Act
12 has occurred with the prosecution or enforcement of any violation of the
13 act;

14 ~~(18)~~ ~~(19)~~ To enter into a settlement agreement with any person
15 regarding the disposition of any license, permit, registration, or
16 administrative fine;

17 ~~(19)~~ ~~(20)~~ To issue a cease and desist order pursuant to section
18 2-2649;

19 ~~(20)~~ ~~(21)~~ To deny an application or cancel, suspend, or modify the
20 registration of a pesticide pursuant to section 2-2632;

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

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

25 Sec. 3. Section 2-2628, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 2-2628 (1) Except as provided by subsection (2), (3), or (4)
28 ~~subsection (2) or (3)~~ of this section, no pesticide shall be distributed
29 in this state or delivered for transportation or transported in
30 intrastate commerce or between points within the state through a point
31 outside the state unless it is registered with the department pursuant to

1 section 2-2629. The manufacturer or other person whose name appears on
2 the label of the pesticide shall register the pesticide.

3 (2) Registration shall not be required for the transportation of a
4 pesticide through the state without being unloaded or stored at any point
5 or from one plant or warehouse to another plant or warehouse operated by
6 the same person if the pesticide is used solely at the second plant or
7 warehouse as a constituent of a pesticide that is registered under such
8 section.

9 (3) Registration shall not be required if the pesticide is
10 distributed under the provisions of an experimental-use permit issued by
11 the federal agency.

12 (4) Registration may not be required, as determined by the
13 department, if the pesticide is not required to be registered by the
14 federal agency.

15 Sec. 4. Section 2-2629, Revised Statutes Cumulative Supplement,
16 2018, is amended to read:

17 2-2629 (1) The application for registration of a pesticide shall
18 include:

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

22 (b) The trade name of the pesticide;

23 (c) A ~~Two~~ complete copy copies of all labeling to accompany the
24 pesticide, including any web sites or other locations where electronic
25 information about the pesticide may be found, and a statement of all
26 claims to be made for it, including the directions for use;

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

29 (e) The use classification proposed by the applicant if the
30 pesticide is not required by federal law to be registered under a use
31 classification;

1 (f) Either a A designation of a resident agent for service of
2 process or a consent by the applicant to the jurisdiction of this state,
3 for ~~in~~ actions taken in the administration and enforcement of the
4 Pesticide Act. ~~In lieu of designating a resident agent, the applicant may~~
5 ~~designate in writing the Secretary of State as the recipient of service~~
6 ~~of process for the applicant in this state; and~~

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

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

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

14 (4) The department may require additional information including a
15 full description of the tests conducted and the results of the tests on
16 which claims are based, either before or after approving the registration
17 of a pesticide. The department may request that additional tests or field
18 monitoring be conducted in Nebraska ecosystems, or reasonably similar
19 ecosystems, in order to determine the validity of assumptions used to
20 register pesticides under the federal act.

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

28 Sec. 5. Section 2-2630, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 2-2630 (1) Each pesticide distributed in this state shall bear a
31 label containing the following information relating to the pesticide:

1 (a) The name, brand, or trademark under which the pesticide is
2 distributed;

3 (b) The name and percentage of each active ingredient and the total
4 percentage of inert ingredients;

5 (c) Directions for use that are necessary for effecting the purpose
6 for which the product is intended and, if complied with, are adequate for
7 the protection of health and the environment;

8 (d) The federal agency's designated registration and establishment
9 numbers for the pesticide ~~If the pesticide contains any form of arsenic,~~
10 ~~the percentage of total water-soluble arsenic, calculated as elementary~~
11 ~~arsenic;~~

12 (e) The name and address of the manufacturer, registrant, or person
13 for whom the pesticide was manufactured;

14 (f) Numbers or other symbols to identify the lot or batch of the
15 manufacturer of the contents of the package; and

16 (g) A clear display of appropriate dangers, warnings, symbols, and
17 cautionary statements commensurate with the toxicity or use
18 classification of the pesticide.

19 (2) The labeling of each pesticide distributed in this state shall
20 state the use classification for which the product is registered.

21 (3) The label bearing the ingredient statement under subdivision (1)
22 (b) of this section shall be on or attached to that part of the immediate
23 container that is presented or displayed under customary conditions of
24 purchase and, if the ingredient statement cannot be clearly read without
25 removing the outer wrapping, on any outer container or wrapper of a
26 retail package.

27 (4) Any word, statement, or information required by the Pesticide
28 Act to appear on a label or in labeling of a pesticide or device shall be
29 prominently and conspicuously placed so that, if compared with other
30 material on the label or in the labeling, it is likely to be understood
31 by the ordinary individual under customary condition of use.

1 Sec. 6. Section 2-2632, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 2-2632 (1) The department may deny an application for registration
4 of a pesticide under the Pesticide Act or may cancel, suspend, or modify
5 such registration if the department finds that:

6 (a) The composition of the pesticide does not warrant the proposed
7 claims made for it;

8 (b) The pesticide, its labeling, or other materials required to be
9 submitted do not comply with the requirements of the Pesticide Act; or

10 (c) The department has reason to believe that any use of a
11 registered pesticide is in violation of a provision of the Pesticide Act
12 or the federal act or is dangerous or harmful.

13 (2) The department shall issue written notice of its denial,
14 cancellation, suspension, or modification and shall give such registrant
15 or applicant an opportunity to make necessary corrections or to have a
16 hearing pursuant to the procedure in section 2-2649.02.

17 (3) After an opportunity at a hearing for presentation of evidence
18 by interested parties, the department may deny, cancel, suspend, or
19 modify the registration of the pesticide if the department finds that:

20 (a) Use of the pesticide has demonstrated uncontrollable adverse
21 environmental effects;

22 (b) Use of the pesticide is a detriment to the environment that
23 outweighs the benefits derived from its use;

24 (c) Even if properly used, the pesticide is detrimental to
25 vegetation except weeds, to domestic animals, or to public health and
26 safety;

27 (d) A false or misleading statement about the pesticide has been
28 made or implied by the registrant or the registrant's agent, in writing,
29 verbally, or through any form of advertising literature;

30 (e) The registrant has not complied or the pesticide or its labeling
31 or submitted material does not comply with a requirement of the Pesticide

1 ~~Act, act or~~ the rules and regulations adopted and promulgated under the
2 ~~act, or the federal act; or~~

3 (f) The composition of the pesticide does not warrant the proposed
4 claims made for it. ~~; or~~

5 ~~(g) The pesticide, its labeling, or other materials required to be~~
6 ~~submitted do not comply with the requirements of the act.~~

7 Sec. 7. Section 2-2635, Revised Statutes Cumulative Supplement,
8 2018, is amended to read:

9 2-2635 (1) Except as provided in subsection (2) of this section, a
10 person shall not distribute at wholesale or retail or possess pesticides
11 with an intent to distribute them without a pesticide dealer license for
12 each distribution location. Any manufacturer, registrant, or distributor
13 who has no pesticide dealer outlet licensed within this state and who
14 distributes such pesticides directly into this state shall obtain a
15 pesticide dealer license for his, her, or its principal out-of-state
16 location or outlet.

17 (2) The requirements of subsection (1) of this section shall not
18 apply to:

19 (a) A commercial applicator or noncommercial applicator licensed
20 under sections 2-2636 to 2-2642 who uses restricted-use pesticides only
21 as an integral part of a pesticide application service and does not
22 distribute any unapplied pesticide;

23 (b) A federal, state, county, or municipal agency using restricted-
24 use pesticides only for its own program; or

25 (c) Persons who sell only pesticide products in containers holding
26 fifty pounds or less by weight or one gallon or less by volume and do not
27 sell any restricted-use pesticides or bulk pesticides.

28 (3) A pesticide dealer may distribute restricted-use pesticides only
29 to:

30 (a) A licensed pesticide dealer;

31 (b) A licensed certified applicator issued a license with the

1 appropriate category for using the restricted-use pesticide being
2 distributed;

3 (c) An applicator issued a license by another state with the
4 appropriate category for using the restricted-use pesticide being
5 distributed;

6 (d) A noncertified applicator authorized by the Pesticide Act to
7 apply restricted-use pesticides if the licensed certified applicator
8 supervising the noncertified applicator is issued a license with the
9 appropriate category for using the restricted-use pesticide being
10 distributed; or

11 (e) Any other person if the pesticide dealer maintains records set
12 out in rules and regulations adopted and promulgated pursuant to the act
13 requiring the person to verify in writing that:

14 (i) The restricted-use pesticide will be delivered to an applicator
15 described in subdivision (3)(b), (c), or (d) of this section; and

16 (ii) The applicator receiving the restricted-use pesticide
17 acknowledges and agrees to the distribution.

18 (4) A pesticide dealer license shall expire on December 31 of each
19 year, unless it is suspended or revoked before that date. Such license
20 shall not be transferable to another person or location and shall be
21 prominently displayed to the public in the pesticide dealer's place of
22 business.

23 (5) If the pesticide dealer has had a license suspended or revoked,
24 or has otherwise had a history of violations of the Pesticide Act, the
25 department may require an additional demonstration of dealer
26 qualifications prior to issuance or renewal of a license to such person.

27 (6) Application for an initial pesticide dealer license shall be
28 submitted to the department prior to commencing business as a pesticide
29 dealer. Application for renewal of a pesticide dealer license shall be
30 submitted to the department by January 1 of each year. All applications
31 shall be accompanied by an annual license fee of twenty-five dollars. The

1 fee may be increased by the director by rules and regulations adopted and
2 promulgated pursuant to the act. The fee shall not exceed one hundred
3 dollars per license. Application shall be on a form prescribed by the
4 department and shall include the full name of the person applying for
5 such license. If such applicant is a partnership, limited liability
6 company, association, corporation, or organized group of persons, the
7 full name of each member of the firm, partnership, or limited liability
8 company or of the principal officers of the association or corporation
9 shall be given on the application. Such application shall further state
10 the address of each outlet to be licensed, the principal business address
11 of the applicant, the name of the person domiciled in this state
12 authorized to receive and accept service of summons of legal notices of
13 all kinds for the applicant, and any other necessary information
14 prescribed by the department.

15 An applicant located outside this state shall file with the
16 department either a written designation of a resident agent for service
17 of process or a written consent to the jurisdiction of this state for in
18 actions taken in the administration and enforcement of the act. ~~In lieu~~
19 ~~of designating a resident agent, the applicant may designate the~~
20 ~~Secretary of State as the recipient of service of process for the~~
21 ~~applicant in this state.~~

22 If an application for renewal of a pesticide dealer license is not
23 filed before January 1 of the year for which the license is to be issued,
24 an additional fee equal to twenty-five percent of the fee due and owing
25 per month, not to exceed one hundred percent, shall be paid by the
26 applicant before the license may be issued. The purpose of the additional
27 fee is to cover the administrative costs associated with collecting fees.

28 ~~An application for a duplicate pesticide dealer's license shall be~~
29 ~~accompanied by a nonrefundable application fee of ten dollars.~~

30 All fees collected pursuant to this subsection shall be remitted to
31 the State Treasurer for credit to the Pesticide Administrative Cash Fund.

1 (7) Each licensed pesticide dealer shall be responsible for the acts
2 of each person employed by him or her in the solicitation and
3 distribution of pesticides and all claims and recommendations for use of
4 pesticides. The dealer's license shall be subject to denial, suspension,
5 modification, or revocation after a hearing for any violation of the act,
6 whether committed by the dealer or by the dealer's officer, agent, or
7 employee.

8 (8) The department shall require each pesticide dealer to maintain
9 records of the dealer's purchases and distribution of all restricted-use
10 pesticides and may require such records to be kept separate from other
11 business records. The department may prescribe by rules and regulations
12 the information to be included in the records. The dealer shall keep such
13 records for a period of three years and shall provide the department
14 access to examine such records and a copy of any record on request.

15 Sec. 8. Section 2-2636, Revised Statutes Cumulative Supplement,
16 2018, is amended to read:

17 2-2636 (1) The department shall license pesticide applicators
18 involved in the categories established in 40 C.F.R. part 171, as the
19 regulation existed on January 1, 2019 ~~2013~~, and any other categories
20 established pursuant to rules and regulations necessary to meet the
21 requirements of the state. The department may issue a reciprocal license
22 to a pesticide applicator licensed or certified in another state or by a
23 federal agency. Residents of the State of Nebraska are not eligible for
24 reciprocal certification. The department may waive part or all of any
25 license certification examination requirements for a reciprocal license
26 if the other state or federal agency that licensed or certified the
27 pesticide applicator has substantially the same certification examination
28 standards and procedural requirements as required under the Pesticide
29 Act.

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

1 (a) At least eighteen years of age except as provided in subsection
2 (6) of section 2-2642;

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

6 ~~(b) Licensed as a private applicator; or~~

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

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

13 (a) Licensed as a commercial applicator; or

14 (b) At least sixteen years of age and working under the direct
15 supervision of a licensed certified applicator pursuant to subsection (4)
16 ~~(5)~~ of section 2-2642.

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

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

22 (b) At least sixteen years of age and working under the direct
23 supervision of a licensed certified applicator pursuant to subsection (4)
24 ~~(5)~~ of section 2-2642.

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

27 Sec. 9. Section 2-2637, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 2-2637 (1) The department may classify commercial and noncommercial
30 licenses under ~~subcategories within~~ categories according to the subject,
31 method, or place of pesticide application and . ~~(2) The director shall~~

1 establish separate testing requirements for certification and licensing
2 in each category ~~for which the department is responsible and may~~
3 ~~establish separate testing requirements for licensing in subcategories~~
4 ~~within a category.~~ All written examinations for certification shall be
5 the property of the department. Any person taking such an examination
6 shall return the examination to the director's authorized agent prior to
7 leaving the examination site.

8 (2) ~~(3)~~ The Cooperative Extension Service of the University of
9 Nebraska (Nebraska Extension), through its county extension educators and
10 specialists in the State of Nebraska, shall conduct training sessions on
11 the use of restricted-use pesticides for private, commercial, and
12 noncommercial applicators which meet the requirements for private
13 applicator certification training established in 40 C.F.R. 171.105, and
14 provide all trainees with . ~~The programs shall be directed toward~~
15 thorough comprehension and knowledge on the safe use of restricted-use
16 pesticides and general-use pesticides used by applicators required to be
17 certified pursuant to sections 2-2636 to 2-2642. The Nebraska Cooperative
18 Extension Service shall schedule regular and frequent training sessions
19 and shall issue recommendations to the director of satisfactory training
20 for private, commercial, and noncommercial applicators completing the
21 training.

22 (3) All candidates for certification or recertification shall
23 present valid government-issued identification at training sessions and
24 certification or recertification examinations.

25 Sec. 10. Section 2-2638, Revised Statutes Cumulative Supplement,
26 2018, is amended to read:

27 2-2638 (1) An individual who uses restricted-use pesticides on the
28 property of another person in the State of Nebraska for hire or
29 compensation shall meet all certification requirements of the Pesticide
30 Act and the rules and regulations adopted and promulgated under the act
31 and shall be a commercial applicator license holder of a license issued

1 for the categories ~~and subcategories~~ in which the pesticide use is to be
2 made.

3 (2) Any person who uses lawn care or structural pest control
4 general-use pesticides on the property of another person in the State of
5 Nebraska for hire or compensation shall be a commercial applicator
6 license holder, except as provided in subsection (3) of section 2-2636,
7 regardless of whether such person uses any restricted-use pesticide.

8 (3) Application for an original or renewal commercial applicator
9 license shall be made to the department on forms prescribed by the
10 department. The application shall include information as required by the
11 director and be accompanied by a license fee of ninety dollars. ~~The~~ ~~if~~
12 ~~the applicant is an individual,~~ the application shall include the
13 applicant's date of birth. The fee may be increased by the director by
14 rules and regulations adopted and promulgated pursuant to the act. The
15 fee shall not exceed one hundred fifty dollars per license. All fees
16 collected shall be remitted to the State Treasurer for credit to the
17 Natural Resources Water Quality Fund.

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

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

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

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

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

30 (5) An individual to whom a commercial applicator license is issued
31 shall be a licensed certified applicator authorized to use restricted-use

1 pesticides in the categories ~~and subcategories~~ in which the individual is
2 licensed.

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

11 Sec. 11. Section 2-2639, Revised Statutes Cumulative Supplement,
12 2018, is amended to read:

13 2-2639 (1) A noncommercial applicator shall meet all certification
14 requirements of the Pesticide Act and shall be a noncommercial applicator
15 license holder of a license issued for the categories ~~and subcategories~~
16 in which the pesticide use is to be made.

17 (2) Application for an original or renewal noncommercial applicator
18 license shall be made to the department on forms prescribed by the
19 department. ~~The~~ ~~If the applicant is an individual,~~ the application shall
20 include the applicant's date of birth. The department shall not charge a
21 noncommercial applicant a license fee.

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

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

29 (5) The department may deny a noncommercial applicator license if it
30 determines that the applicant:

31 (a) Has had a license as a licensed certified applicator issued by

1 this state or another state revoked within the last two years;

2 (b) Has been unable to satisfactorily fulfill certification or
3 licensing requirements;

4 (c) For any other reason is unable to fulfill the provisions of the
5 Pesticide Act applicable to the category for which application is made;

6 (d) For an original noncommercial applicator license, has not passed
7 an examination under sections 2-2637 and 2-2640; or

8 (e) Meets the definition of a private applicator.

9 (6) (5) As a condition to issuance of a noncommercial applicator
10 license, an applicant located outside this state shall file with the
11 department either a written designation of a resident agent for service
12 of process or a written consent to the jurisdiction of this state for in
13 actions taken in the administration and enforcement of the Pesticide Act.
14 In lieu of designating a resident agent the applicant may designate the
15 Secretary of State as the recipient of service of process for the
16 applicant in this state.

17 Sec. 12. Section 2-2640, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 2-2640 Each person applying for a license as a commercial or
20 noncommercial applicator shall meet the certification requirement of
21 passing an examination demonstrating that the person:

22 (1) Is properly qualified to perform functions associated with
23 pesticide use to a degree directly related to the nature of the activity
24 and the associated responsibility; and

25 (2) Has knowledge of the use and effects of restricted-use
26 pesticides in the categories ~~and subcategories~~ in which the person is to
27 be licensed.

28 Sec. 13. Section 2-2641, Revised Statutes Cumulative Supplement,
29 2018, is amended to read:

30 2-2641 ~~(1) A person shall be deemed to be a private applicator if~~
31 ~~the person uses a restricted-use pesticide in the State of Nebraska for~~

1 ~~the purpose of producing an agricultural commodity:~~

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

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

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

11 (1) An individual ~~(3) Every person~~ applying for a license as a
12 private applicator shall meet the certification requirement of (a)
13 undertaking a training session approved by the department or (b) passing
14 an examination showing that the person is properly qualified to perform
15 functions associated with pesticide use to a degree directly related to
16 the nature of the activity and the associated responsibility. The
17 examination shall be approved by the department and monitored by the
18 department or its authorized agent. The ~~If the applicant is an~~
19 ~~individual,~~ the application shall include the applicant's date of birth.

20 (2) All candidates for certification or recertification must present
21 valid government-issued identification at training sessions and
22 certification or recertification examinations.

23 (3) ~~(4)~~ Application for an original or renewal private applicator
24 license shall be made to the department on forms prescribed by the
25 department and shall be accompanied by a license fee of twenty-five
26 dollars. All fees collected shall be remitted to the State Treasurer for
27 credit to the Natural Resources Water Quality Fund.

28 Sec. 14. Section 2-2642, Revised Statutes Cumulative Supplement,
29 2018, is amended to read:

30 2-2642 (1) Each commercial, noncommercial, and private applicator
31 license shall expire on April 15 following the third year in which it was

1 issued.

2 (2) Except as provided by subsection (3) of this section, a person
3 having a valid commercial or noncommercial applicator license may renew
4 the license for another three-year period by:

5 (a) Paying to the department an amount equal to the license fee
6 required by section 2-2638 for commercial applicator licenses or section
7 2-2639 for noncommercial applicator licenses, if any; and

8 (b)(i) Undertaking the training approved by the department; or

9 (ii) Submitting to retesting prior to renewal of the license.

10 (3) Any person who allows his or her commercial or noncommercial
11 applicator license to expire shall be required to submit to testing prior
12 to the renewal of the license.

13 ~~(4) The application for renewal of a private applicator license~~
14 ~~shall be the same as the application for an initial license.~~

15 (4) A noncertified applicator ~~(5) Notwithstanding sections 2-2636 to~~
16 ~~2-2642, any individual required by the Pesticide Act to be a licensed~~
17 ~~certified~~ commercial or noncommercial applicator may use general-use
18 pesticides as a noncertified applicator prior to obtaining an initial
19 license for only one consecutive sixty-day period of time if:

20 (a) The individual or his or her employer applies to the department
21 for a license as a licensed certified applicator within ten days of
22 making the first pesticide use. Such license application shall include
23 the name and license number of the licensed certified applicator who is
24 supervising the noncertified applicator;

25 (b) All pesticide uses made by an individual as a noncertified
26 applicator are made under the direct supervision of a licensed certified
27 applicator meeting the requirements of 40 C.F.R. 171.201; ~~and~~

28 (c) The noncertified applicator has received training meeting the
29 requirements of 40 C.F.R. 171.201; and licensed certified applicator
30 provides such training and supervision as is necessary to:

31 (i) ~~Determine the level of experience and knowledge of the~~

1 ~~noncertified applicator in the use of a pesticide;~~

2 ~~(ii) Provide verifiable, detailed guidance on how to conduct each~~
3 ~~individual pesticide use performed under his or her direct supervision;~~

4 ~~(iii) Accompany the noncertified applicator to at least one site~~
5 ~~which would be typical of each type of pesticide use that the~~
6 ~~noncertified applicator performs;~~

7 ~~(d) The supervising certified applicator remains~~ (iv) Be accessible
8 by voice or electronic means to provide further instructions at all times
9 during the noncertified applicator's use of the pesticide; and is (v) Be
10 able to be physically on the site, should the need arise, where the
11 pesticide use or storage is taking place within a reasonable period of
12 time as established by the director by rules and regulations. Both the
13 licensed certified applicator and noncertified applicator shall be
14 responsible for the acts of the noncertified applicator and each shall be
15 subject to all fines, license actions, and other enforcement actions
16 prescribed by the Pesticide Act for violations under the act. The
17 department may deny or suspend the use of pesticides by a noncertified
18 applicator if it has reasonable cause to believe that such person may not
19 become eligible to become a licensed certified applicator or uses any
20 pesticide in violation of the act.

21 (5) A noncertified applicator required by the Pesticide Act to be a
22 licensed certified commercial or noncommercial applicator may use a
23 restricted-use pesticide which is not a fumigant, sodium cyanide, or
24 sodium fluoroacetate as a noncertified applicator prior to obtaining an
25 initial license for only one consecutive sixty-day period of time if:

26 (a) The noncertified applicator complies with the requirements of
27 subsection (4) of this section; and

28 (b) The noncertified applicator does not apply the restricted-use
29 pesticides aerially.

30 (6) A noncertified applicator required by the Pesticide Act to be a
31 licensed certified private applicator may apply restricted-use pesticides

1 for the purpose of producing agricultural commodities on property owned
2 or rented by his or her immediate family for one consecutive twenty-four
3 month period if:

4 (a) The noncertified applicator is at least sixteen years of age and
5 working under the direct supervision of a licensed private applicator who
6 is an immediate family member;

7 (b) The noncertified applicator has received training through a
8 training session meeting the requirements of 40 C.F.R. 171.201; and

9 (c) The supervising certified applicator is in compliance with the
10 requirements of 40 C.F.R. 171.201.

11 Sec. 15. Section 2-2643, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 2-2643 (1) All applicators applying restricted-use pesticides are
14 required ~~The department shall require each licensed certified applicator~~
15 ~~to maintain records of the use of all restricted-use pesticides. Licensed~~
16 ~~certified applicators who supervise noncertified applicators are required~~
17 ~~to document and maintain or verify the existence of and have access to~~
18 ~~the records required to be maintained by 40 C.F.R. 171.201. The~~
19 ~~department may by rules and regulations prescribe the information to be~~
20 ~~included in the records.~~

21 (2) The department may require a license holder to keep records of
22 the licensee's use of general-use pesticides. The department may by rules
23 and regulations prescribe the information to be included in the records.

24 (3) The license holder shall keep records required under this
25 section for a period of three years from the date of the pesticide use.

26 (4) The license holder shall provide the department access to such
27 records and a copy of any requested record pertaining to the use of
28 pesticides.

29 Sec. 16. Section 2-2643.02, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 2-2643.02 A license holder shall comply with the Pesticide Act, the

1 rules and regulations adopted and promulgated pursuant to the act, and
2 any order of the director issued pursuant to the act. A license holder
3 shall not interfere with the department in the performance of its duties.
4 A license holder acting as a supervisor to a noncertified applicator is
5 required to comply with the requirements of subsections (4), (5), and (6)
6 of section 2-2642.

7 Sec. 17. Section 2-2645, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 2-2645 (1) A person claiming damages from a pesticide use may file
10 with the department a written report claiming that the person has been
11 damaged. The report shall be filed as soon as possible following the day
12 of the alleged occurrence.

13 (2) Except as otherwise provided in the Pesticide Act, upon receipt
14 of a report if the department has reasonable cause to believe that a
15 violation of the act has occurred, it shall investigate such report to
16 determine if any violation has occurred and if any ~~further~~ enforcement
17 action shall be taken under the act. The department is not required to
18 investigate any complaint that the department determines is made more
19 than ninety days after the person complaining knew of the incident or
20 damages, is outside the scope of the Pesticide Act, or is determined by
21 the department to involve a matter which is frivolous, or minor, or
22 insignificant under the intent of the act. If a complaint is
23 investigated, the department shall notify the licensee, owner, or lessee
24 of the property on which the alleged act occurred and any other person
25 who may be charged with responsibility for the damages claimed. The
26 department shall furnish copies of the report to such licensee, owner,
27 lessee, or other person upon receiving a written request. Nothing in this
28 subsection shall be construed to require the department to take
29 enforcement action in any matter.

30 (3) The department shall inspect damages whenever possible and shall
31 report its findings to the person claiming damage and to the person

1 alleged to have caused the damage. The claimant shall permit the
2 department and the licensee to inspect ~~observe~~, within reasonable hours,
3 the property alleged to have been damaged. If the claimant refuses to
4 permit the department to inspect the property alleged to have been
5 damaged, or fails to provide additional information regarding the
6 allegation when requested by the department, the department may decline
7 to investigate the claim.

8 (4) Failure to file a report shall not bar maintenance of a civil or
9 criminal action. If a person fails to file a report or cooperate with the
10 department and is the only person claiming injury from the particular use
11 of a pesticide, the department may, if in the public interest, refuse to
12 take action or hold a hearing for the denial, suspension, or revocation
13 of a license issued under the act to the person alleged to have caused
14 the damage.

15 Sec. 18. Section 2-2646, Revised Statutes Cumulative Supplement,
16 2018, is amended to read:

17 2-2646 It shall be unlawful for any person:

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

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

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

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

30 (d) A pesticide that is adulterated;

31 (e) A pesticide or device that is misbranded;

- 1 (f) A pesticide in a container that is unsafe due to damage;
2 (g) A pesticide which differs from its composition as registered; or
3 (h) A pesticide that has not been colored or discolored as required
4 by the Pesticide Act or the federal act;

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

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

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

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

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

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

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

6 (e) Use a pesticide in conformance with 7 U.S.C. 136c, 136p, or 136v
7 of the federal act or section 2-2626; or

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

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

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

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

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

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

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

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

1 registrant;

2 (9) To commit an act for which a licensed certified applicator's
3 license may be suspended, modified, revoked, or placed on probation under
4 the Pesticide Act whether or not the person committing the act is a
5 licensed certified applicator;

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

10 (11) To fail to obtain a license or to pay all fees and fines as
11 prescribed by an order of the director, the act, and the rules and
12 regulations adopted and promulgated pursuant to the act;

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

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

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

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

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

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

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

1 practically be confined to public property;

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

5 (20) To alter or falsify all or part of a license issued by the
6 department; and

7 (21) To violate any other provision of the act.

8 Sec. 19. Section 2-2653, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 2-2653 Notwithstanding any other provision of the Pesticide Act, the
11 duties and responsibilities of the department under the act shall be
12 subject to adequate federal, cash, and general funding appropriation
13 being made by the Legislature. If adequate funds are not made available
14 under the act, the department shall submit a revised state pesticide
15 applicator certification plan to the federal agency outlining the current
16 program.

17 Sec. 20. Section 2-2656, Revised Statutes Cumulative Supplement,
18 2018, is amended to read:

19 2-2656 (1) An application for an initial or renewal Nebraska aerial
20 pesticide business license shall be submitted to the department prior to
21 the commencement of aerial spraying operations, and an application for
22 renewal of a Nebraska aerial pesticide business license shall be
23 submitted to the department before commencement of application of
24 pesticides. The application shall be accompanied by an annual license fee
25 of one hundred dollars. The license fee may be increased by the director
26 after a public hearing is held outlining the reason for any proposed
27 change in the fee, except that the fee shall not exceed one hundred fifty
28 dollars. All fees collected pursuant to this section shall be remitted to
29 the State Treasurer for credit to the Pesticide Administrative Cash Fund.
30 The application shall be on a form prescribed by the department and shall
31 include the following:

1 (a) The full name and permanent mailing address of the person
2 applying for such license. If such applicant is an individual, the
3 application shall include the applicant's personal mailing address. If
4 such applicant is not an individual, the full name of each partner or
5 member or the full name of the principal officers shall be given on the
6 application;

7 (b) The location of the applicant's principal departure location and
8 any additional departure locations utilized for aerial spraying
9 operations to be conducted within Nebraska identified by one of the
10 following: Global Positioning System coordinates, legal description,
11 local address of the site, or airport identifier;

12 (c) A copy of the applicant's agricultural aircraft operator
13 certificate issued pursuant to 14 C.F.R. part 137 or evidence the
14 applicant holds such a certificate issued by the Federal Aviation
15 Administration;

16 (d) The aircraft registration number issued by the Federal Aviation
17 Administration pursuant to 14 C.F.R. part 47 of all aircraft owned,
18 rented, or leased by the applicant to be utilized for aerial pesticide
19 applications and all other aircraft utilized in aerial spraying
20 operations conducted by the applicant;

21 (e) The Nebraska commercial applicator certificate number and
22 current Federal Aviation Administration commercial pilot certificate
23 number of all persons operating aircraft for the aerial application of
24 pesticides during any aerial spraying operations conducted by the
25 applicant; and

26 (f) Such other information as deemed necessary by the director to
27 determine the suitability of the applicant for licensure as an aerial
28 pesticide business.

29 (2) An applicant located outside this state shall file with the
30 department either a written designation of a resident agent for service
31 of process or a written consent to the jurisdiction of this state for in

1 actions taken in the administration and enforcement of the Pesticide Act.
2 ~~In lieu of designating a resident agent, the applicant may designate the~~
3 ~~Secretary of State as the recipient of service of process for the~~
4 ~~applicant in this state.~~

5 Sec. 21. Original sections 2-2628, 2-2630, 2-2632, 2-2637, 2-2640,
6 2-2643, 2-2643.02, 2-2645, and 2-2653, Reissue Revised Statutes of
7 Nebraska, and sections 2-2624, 2-2626, 2-2629, 2-2635, 2-2636, 2-2638,
8 2-2639, 2-2641, 2-2642, 2-2646, and 2-2656, Revised Statutes Cumulative
9 Supplement, 2018, are repealed.