

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 15

Introduced by Krist, 10.

Read first time January 10, 2013

Committee:

A BILL

1 FOR AN ACT relating to the Pesticide Act; to amend sections 2-2624,
2 2-2645, 2-2648, 2-2650, 2-2652, 2-2655, and 2-2658,
3 Reissue Revised Statutes of Nebraska; to change
4 provisions relating to aerial pesticide spraying; to
5 harmonize provisions; and to repeal the original
6 sections.

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

1 Section 1. Section 2-2624, Reissue Revised Statutes of
2 Nebraska, 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
6 regulator, defoliant, or desiccant, an ingredient that prevents,
7 destroys, repels, or mitigates a pest;

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

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

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

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

18 (3) Adulterated means:

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

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

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

1 ~~(4)~~ Aerial pesticide applicator means an aircraft pilot
2 who is qualified to perform aerial pesticide spraying operations by
3 meeting the requirements of subsection (2) of section 2-2655;

4 ~~(5)~~ Aerial pesticide business means a person holding a
5 Nebraska aerial pesticide business license;

6 ~~(4)~~—~~(6)~~ Animal means a vertebrate or invertebrate
7 species, including humans, other mammals, birds, fish, and shellfish;

8 ~~(5)~~—~~(7)~~ Antidote means a practical treatment used in
9 preventing or lessening ill effects from poisoning, including first
10 aid;

11 ~~(6)~~—~~(8)~~ Biological control agent means any living
12 organism applied to or introduced into the environment that is
13 intended to function as a pesticide against another organism;

14 ~~(7)~~—~~(9)~~ Bulk means any distribution of a pesticide in a
15 refillable container designed and constructed to accommodate the
16 return and refill of greater than fifty-five gallons of liquid
17 measure or one hundred pounds of dry net weight of the product;

18 ~~(8)~~—~~(10)~~ Commercial applicator means any applicator
19 required by the act to obtain a commercial applicator license;

20 ~~(9)~~—~~(11)~~ Dealer means any manufacturer, registrant, or
21 distributor who is required to be licensed as such under section
22 2-2635;

23 ~~(10)~~—~~(12)~~ Defoliant means a substance or mixture of
24 substances intended to cause the leaves or foliage to drop from a
25 plant, with or without causing abscission;

1 ~~(11)~~(13) Department means the Department of Agriculture;

2 ~~(12)~~(14) Desiccant means a substance or mixture of
3 substances intended to artificially accelerate the drying of plant
4 tissue;

5 ~~(13)~~(15) Device means an instrument or contrivance,
6 other than a firearm, that is used to trap, destroy, repel, or
7 mitigate a pest or other form of plant or animal life, other than a
8 human or a bacteria, virus, or other microorganism on or in living
9 humans or other living animals. Device does not include equipment
10 intended to be used for the application of pesticides when sold
11 separately from a pesticide;

12 ~~(14)~~(16) Director means the Director of Agriculture or
13 his or her designee;

14 ~~(15)~~(17) Distribute means to offer for sale, hold for
15 sale, sell, barter, exchange, supply, deliver, offer to deliver,
16 ship, hold for shipment, deliver for shipment, or release for
17 shipment;

18 ~~(16)~~(18) Environment includes water, air, land, plants,
19 humans, and other animals living in or on water, air, or land and
20 interrelationships which exist among these;

21 ~~(17)~~(19) Federal act means the Federal Insecticide,
22 Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and any
23 regulations adopted and promulgated under it, as the act and
24 regulations existed on January 1, 2006;

25 ~~(18)~~(20) Federal agency means the United States

1 Environmental Protection Agency;

2 ~~(19)~~—(21) Fungus means any non-chlorophyll-bearing
3 thallophyte, including rust, smut, mildew, mold, yeast, and bacteria,
4 but does not include non-chlorophyll-bearing thallophytes on or in
5 living humans or other living animals or those on or in a processed
6 food or beverage or pharmaceuticals;

7 ~~(20)~~—(22) Inert ingredient means an ingredient that is
8 not an active ingredient;

9 ~~(21)~~—(23) Ingredient statement means a statement which
10 contains the name and percentage of each active ingredient and the
11 total percentage of all inert ingredients in the pesticide. If the
12 pesticide contains arsenic in any form, a statement of the percentage
13 of total water-soluble arsenic calculated as elementary arsenic shall
14 be included;

15 ~~(22)~~—(24) Insect means any of the numerous small
16 invertebrate animals generally having a segmented body and for the
17 most part belong to the class Insecta, comprising six-legged, usually
18 winged forms such as beetles, bugs, bees, and flies. Insect includes
19 allied classes of arthropods, the members of which are wingless and
20 usually have more than six legs, such as spiders, mites, ticks,
21 centipedes, and wood lice;

22 ~~(23)~~—(25) Label means the written, printed, or graphic
23 matter on or attached to a pesticide or device or any of its
24 containers or wrappers;

25 ~~(24)~~—(26) Labeling means all labels and any other

1 written, printed, or graphic matter (a) accompanying the pesticide or
2 device at any time or (b) to which reference is made on a label or in
3 literature accompanying or referring to a pesticide or device, except
4 accurate, nonmisleading references made to a current official
5 publication of a federal or state institution or agency authorized by
6 law to conduct research in the field of pesticides;

7 ~~(25)~~(27) License holder means any person licensed under
8 the Pesticide Act;

9 ~~(26)~~(28) Licensed certified applicator means any person
10 licensed and certified under the act as a commercial applicator,
11 noncommercial applicator, or private applicator;

12 ~~(27)~~(29) Misbranded means that any pesticide meets one
13 or more of the following criteria:

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

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

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

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

25 (e) Any word, statement, or other information required by

1 or under authority of the Pesticide Act to appear on the label or
2 labeling is not prominently placed thereon with such conspicuousness,
3 as compared with other words, statements, designs, or graphic matter
4 in the labeling, and in such terms as to render it likely to be read
5 and understood by the ordinary individual under customary conditions
6 of purchase and use;

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

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

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

25 (i) The label does not bear an ingredient statement on

1 that part of the immediate container, and on the outside container or
2 wrapper of the retail package, if any, through which the ingredient
3 statement on the immediate container cannot be clearly read, which is
4 presented or displayed under customary conditions of purchase, except
5 that a pesticide is not misbranded under this subdivision if:

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

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

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

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

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

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

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

25 (iv) When required by regulations of the administrator to

1 effectuate the purposes of the federal act, the registration number
2 assigned to the pesticide under such act and the use classification;
3 or

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

7 (i) The skull and crossbones;

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

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

12 ~~(28)~~ (30) Nematode means an invertebrate animal of the
13 phylum Nemathelminthes and class Nematode, an unsegmented roundworm
14 with an elongated, fusiform, or sac-like body covered with cuticle,
15 inhabiting soil, water, plants, or plant parts;

16 ~~(29)~~ (31) Noncommercial applicator means (a) any
17 applicator who is not a commercial applicator and uses restricted-use
18 pesticides only on property owned or controlled by his or her
19 employer or for a federal entity or state agency or a political
20 subdivision of the state or (b) any employee or other person acting
21 on behalf of a political subdivision of the state who is not a
22 commercial applicator who uses pesticides for outdoor vector control;

23 ~~(30)~~ (32) Person means any individual, partnership,
24 limited liability company, association, corporation, or organized
25 group of persons, whether incorporated or not;

1 ~~(31)~~(33) Pest means:

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

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

8 ~~(32)~~(34) Pesticide means a substance or mixture of
9 substances intended to prevent, destroy, repel, or mitigate any pest
10 or any substance or mixture of substances intended for use as a plant
11 regulator, defoliant, or desiccant, including any biological control
12 agent. Pesticide includes specialty pesticides. Pesticide does not
13 include any article that is a new animal drug within the meaning of
14 the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(v), as the
15 section existed on January 1, 2006, that has been determined by the
16 Secretary of Health and Human Services to be a new animal drug by
17 regulation establishing conditions of use for the article, or that is
18 an animal feed within the meaning of the Federal Food, Drug, and
19 Cosmetic Act, 21 U.S.C. 321(w), as the section existed on January 1,
20 2006, bearing or containing a new animal drug;

21 ~~(33)~~(35) Pesticide management plan means a management
22 plan for a specific, identified pesticide to implement a strategy to
23 prevent, monitor, evaluate, and mitigate (a) any occurrence of the
24 pesticide or pesticide breakdown products in ground water and surface
25 water in the state or (b) any other unreasonable adverse effect of

1 the pesticide on humans or the environment;

2 ~~(34)~~(36) Plant regulator means a substance or mixture of
3 substances intended through physiological action to accelerate or
4 retard the rate of growth or rate of maturation or otherwise to alter
5 the behavior of an ornamental or crop plant or the product of an
6 ornamental or crop plant but does not include a substance to the
7 extent that it is intended as a plant nutrient, trace element,
8 nutritional chemical, plant inoculant, or soil amendment;

9 ~~(35)~~(37) Pollute means to alter the physical, chemical,
10 or biological quality of or to contaminate water in the state, which
11 alteration or contamination renders the water harmful, detrimental,
12 or injurious to humans, the environment, or the public health,
13 safety, or welfare;

14 ~~(36)~~(38) Private applicator means an applicator who is
15 not a commercial applicator or a noncommercial applicator and uses or
16 supervises the use of any pesticide which is classified for
17 restricted use for purposes of producing any agricultural commodity
18 on property owned or rented by him or her or his or her employer or,
19 if applied without compensation other than trading of personal
20 services between producers of agricultural commodities, on the
21 property of another person;

22 ~~(37)~~(39) Property means any land or water area,
23 including airspace, and any plant, animal, structure, building,
24 contrivance, commodity, or machinery, whether fixed or mobile,
25 appurtenant to or situated on a land or water area or airspace,

1 including any vehicle used for transportation;

2 ~~(38)~~ (40) Restricted-use pesticide means a pesticide
3 classified as a restricted-use pesticide by the federal agency, a
4 state-limited-use pesticide, or any pesticide for which an exemption
5 under section 136p of the federal act has been granted;

6 ~~(39)~~ (41) Specialty pesticide means (a) a disinfectant,
7 sanitizer, germicide, or biocide or (b) a pesticide labeled solely
8 for use directly on humans or pets or in, on, or around areas
9 associated with the household or home life, including lawn and garden
10 and ornamental uses, but does not include turf as determined by the
11 director;

12 ~~(40)~~ (42) State management plan means a generic plan
13 developed by the department to implement a strategy to prevent,
14 monitor, evaluate, and mitigate any occurrence of pesticides in
15 ground water and surface water in the state and any specific plans
16 developed when an occurrence has been detected;

17 ~~(41)~~ (43) State pesticide plan means the plan developed
18 by the department to enter into a cooperative agreement with the
19 federal agency to assume the responsibility for the primary
20 enforcement of pesticide use and the training and licensing of
21 certified applicators;

22 ~~(42)~~ (44) State-limited-use pesticide means any pesticide
23 included on a list of state-limited-use pesticides by the department
24 pursuant to a pesticide management plan;

25 ~~(43)~~ (45) Unreasonable adverse effect on humans or the

1 environment means any unreasonable risk to humans or the environment
2 taking into account the severity and longevity of adverse effects of
3 use of the pesticide and also taking into account the economic,
4 social, and environmental costs and benefits of the use of the
5 pesticide. The costs and benefits of a public health pesticide shall
6 also weigh any risks of the use of the pesticide against the health
7 risks to be mitigated or controlled by the use of the pesticide;

8 ~~(44)~~—(46) Vector means any organism capable of
9 transmitting the causative agent of human disease or capable of
10 producing human discomfort or injury, including mosquitoes, flies,
11 fleas, cockroaches, ticks, mites, other insects, mice, and rats; and

12 ~~(45)~~—(47) Weed means any plant that grows where not
13 wanted.

14 Sec. 2. Section 2-2645, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 2-2645 (1) A person claiming damages from a pesticide use
17 may file with the department a written report claiming that the
18 person has been damaged. The report shall be filed as soon as
19 possible following the day of the alleged occurrence.

20 (2) Except as otherwise provided in the Pesticide Act,
21 upon receipt of a report if the department has reasonable cause to
22 believe that a violation of the act has occurred, it shall
23 investigate such report to determine if any violation has occurred
24 and if any further enforcement action shall be taken under the act.
25 The department is not required to investigate any complaint that the

1 department determines is made more than ninety days after the person
2 complaining knew of the damages, is outside the scope of the
3 Pesticide Act, or is frivolous or minor. Alleged violations, not
4 deemed frivolous or minor, against an aerial pesticide applicator
5 relating to the aircraft or aircraft operation and other federal
6 aeronautic requirements shall be referred to and are under the
7 jurisdiction of the Department of Aeronautics. If a complaint is
8 investigated, the department shall notify the licensee, owner, or
9 lessee of the property on which the alleged act occurred and any
10 other person who may be charged with responsibility for the damages
11 claimed. The department shall furnish copies of the report to such
12 licensee, owner, lessee, or other person upon written request.

13 (3) The department shall inspect damages whenever
14 possible and shall report its findings to the person claiming damage
15 and to the person alleged to have caused the damage. The report shall
16 be completed within ninety calendar days after beginning an
17 investigation under this section. The claimant shall permit the
18 department and the licensee to observe, within reasonable hours, the
19 property alleged to have been damaged.

20 (4) Failure to file a report shall not bar maintenance of
21 a civil or criminal action. If a person fails to file a report or
22 cooperate with the department and is the only person claiming injury
23 from the particular use of a pesticide, the department may, if in the
24 public interest, refuse to take action or hold a hearing for the
25 denial, suspension, or revocation of a license issued under the act

1 to the person alleged to have caused the damage.

2 Sec. 3. Section 2-2648, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 2-2648 (1) Any person who violates any provision of the
5 Pesticide Act, the rules and regulations adopted and promulgated
6 under the act, or any final order of the department may be subject to
7 a civil fine of not more than fifteen thousand dollars for each
8 offense, and in the case of a continuing violation, each day of
9 violation shall constitute a separate offense. If a violation
10 involves an aerial pesticide spraying operation, any fine shall be
11 levied against the aerial pesticide business and not the aerial
12 pesticide applicator. The district court of the county where the
13 violation has occurred, is occurring, or is about to occur shall have
14 jurisdiction to grant such relief upon good cause shown. Relief may
15 be granted notwithstanding the existence of any other remedy at law
16 and shall be granted without bond.

17 (2) It shall be the duty of the Attorney General or the
18 county attorney of the county in which the violation of the act has
19 occurred, is occurring, or is about to occur, when notified by the
20 director of such violation or threatened violation, to pursue
21 appropriate proceedings without delay pursuant to this section.

22 Sec. 4. Section 2-2650, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 2-2650 (1) Whenever a violation of the Pesticide Act has
25 occurred, the following shall be considered when determining the

1 severity or amount of any administrative or civil fine, the issuance
2 of a cease and desist order, or the disposition of any license:

3 ~~(1)-(a)~~ The culpability and good faith of and any past
4 violations by such person; and

5 ~~(2)-(b)~~ The seriousness of the violation, including the
6 amount of any actual or potential risk to human health or
7 environment. ; and

8 ~~(3) The extent to which the person derived financial gain~~
9 ~~as a result of permitting or committing the violation, including a~~
10 ~~determination of the size of the company itself and the impact on it.~~

11 (2) Fines for violations of the act shall be levied
12 uniformly regardless of the size of the business or its income.

13 Sec. 5. Section 2-2652, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 2-2652 (1) A pesticide dealer, an aerial pesticide
16 business, or a commercial, noncommercial, or private applicator or an
17 applicant for any such license shall not allow a final judgment
18 against the applicant or licensee for damages arising from a
19 violation of a provision of the Pesticide Act to remain unsatisfied
20 for a period of more than thirty days.

21 (2) Failure to satisfy within thirty days a final
22 judgment resulting from any activity regulated under the act shall
23 result in automatic suspension or denial of the applicable license.

24 Sec. 6. Section 2-2655, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 2-2655 (1) A person shall not apply pesticides by use of
2 an aircraft or cause or arrange aerial pesticide spraying operations
3 to occur on the property of another unless such person holds a
4 Nebraska aerial pesticide business license for the principal
5 departure location of the aircraft to be used. Any person applying
6 pesticides without a principal departure location licensed in this
7 state and who applies pesticides by use of an aircraft within this
8 state may obtain a Nebraska aerial pesticide business license for the
9 principal out-of-state departure location. An individual licensed as
10 a commercial applicator shall apply pesticides by use of an aircraft
11 only under the direct supervision of a person holding a Nebraska
12 aerial pesticide business license. Such supervising license holder is
13 jointly liable with the commercial applicator for any damages caused
14 by the commercial applicator. An individual who is licensed as a
15 commercial applicator with an aerial pest control category may
16 perform aerial operations without the supervision by a person holding
17 a Nebraska aerial pesticide business license if the commercial aerial
18 applicator acquires a Nebraska aerial pesticide business license. For
19 purposes of sections 2-2655 to 2-2659, unless utilizing a licensed
20 aerial pesticide business to perform the application of pesticides by
21 use of an aircraft, a person causing or arranging aerial pesticide
22 spraying operations shall include a person performing billing and
23 collection of payment for aerial spraying services performed,
24 employing or contracting with pilots to perform aerial applications,
25 assigning aerial spraying work orders to pilots, or paying

1 ~~compensation to pilots for aerial spraying services performed whether~~
2 ~~or not such person is licensed as a commercial applicator.~~

3 (1) Aerial pesticide spraying operations on the property
4 of another shall be done or caused or arranged to be done only by an
5 aerial pesticide business. The aerial pesticide business license
6 shall be for the principal departure location in this state of the
7 aircraft or aircrafts to be used or, if the business does not have a
8 principal departure location in this state, for the principal out-of-
9 state departure location. An aerial pesticide business shall include
10 a person performing billing and collection of payment for aerial
11 spraying operations performed, employing, or contracting with aerial
12 pesticide applicators to perform aerial pesticide operations,
13 assigning aerial spraying work orders to aerial pesticide
14 applicators, paying compensation to aerial pesticide applicators for
15 aerial spraying operations performed, and complying with sections
16 2-2655 to 2-2659.

17 (2) An aerial pesticide applicator shall:

18 (a) Work under the direct supervision of an aerial
19 pesticide business or be an individual who holds a Nebraska aerial
20 pesticide business license;

21 (b) Be certified as an agricultural aircraft operator
22 pursuant to 14 C.F.R. part 137; and

23 (c) Be licensed as a commercial applicator with an aerial
24 pest control category under the Pesticide Act.

25 ~~(2)~~(3) Sections 2-2655 to 2-2659 shall not apply to

1 aerial spraying operations conducted by federal, state, or local
2 government with public aircraft.

3 Sec. 7. Section 2-2658, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 2-2658 (1) Each Nebraska aerial pesticide business
6 license holder is responsible for the acts of each person applying
7 pesticides on lands within this state under the direction and
8 supervision of the business. The aerial pesticide business's license
9 is subject to denial, suspension, modification, or revocation after a
10 hearing for any violation of the Pesticide Act, whether committed by
11 the license holder, the license holder's agent, or the license
12 holder's employee.

13 (2) The aerial pesticide business is jointly liable with
14 the aerial pesticide applicator for any damages caused by the aerial
15 pesticide applicator. A violation of the act resulting in an
16 administrative fine shall be levied against the aerial pesticide
17 business and not the aerial pesticide applicator.

18 Sec. 8. Original sections 2-2624, 2-2645, 2-2648, 2-2650,
19 2-2652, 2-2655, and 2-2658, Reissue Revised Statutes of Nebraska, are
20 repealed.