

LEGISLATIVE BILL 438

Approved by the Governor April 17, 2001

Introduced by Dierks, 40

AN ACT relating to livestock; to amend sections 54-701, 54-701.02, 54-703 to 54-705, 54-742, 54-746, and 54-751 to 54-753, Reissue Revised Statutes of Nebraska, and sections 54-701.03 and 54-744, Revised Statutes Supplement, 2000; to change provisions relating to livestock disease prevention and control and livestock carcass disposal; to define terms; to provide for voluntary livestock certification programs; to provide powers and duties; to provide penalties; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 54-701, Reissue Revised Statutes of Nebraska, is amended to read:

54-701. (1) The Department of Agriculture shall be vested with the power and charged with the duties of protecting the health of livestock in Nebraska and determining and employing the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, infectious, contagious, or otherwise transmissible diseases among livestock and such diseases transmissible from other animals to livestock. To that end, the department may place in quarantine any county or part of any county, any private premises, or any private or public stockyards and may quarantine any animal infected with such disease or which has been or is suspected of having been exposed to infection therefrom, may kill any animal so infected, and may regulate or prohibit the arrival into and departure from and movement within the state of any animal infected with such disease or exposed or suspected of having been exposed to the cause, infection, or contagion therefrom. At the cost of the owner, the department may detain any animal found in violation of any departmental or statutory regulation or prohibition.

(2) The department may adopt, promulgate, and enforce such rules and regulations as may be necessary for the supervision and control of manufactured and refined food for animals to prevent deleterious substances being present in human foods of animal origin and the manufacture, importation, sale, and storage of any biological material including semen, remedy, or curative agent for use on or in any animal that may be capable of causing or spreading disease, and as far as practicable such rules and regulations approved by the United States Department of Agriculture shall be adopted. All of the powers and duties of the department with reference to the protection of the health of livestock shall be exercised by and through the Bureau of Animal Industry.

Sec. 2. Section 54-701.02, Reissue Revised Statutes of Nebraska, is amended to read:

54-701.02. The Legislature finds and declares that animal disease control is essential to the livestock industry and the health of the economy of this state. In carrying out its powers and duties, the department shall evaluate activities resulting from the following subdivisions to determine their relevance to protecting the health of livestock and review its available resources. When department funds and personnel are available and such activities are determined by the department to be relevant, feasible, and consistent with the purpose of Chapter 54, article 7, the department:

(1) Shall develop a statewide livestock emergency response system capable of coordinating and executing a rapid response to the incursion, or potential incursion, of a dangerous livestock disease episode which poses a threat to the health of the state's livestock and could cause a serious economic impact on the state;

(2) Shall conduct surveillance to monitor program disease control and eradication programs;

(3) Shall conduct surveillance to detect and monitor nonprogram diseases which are, or have the potential of, causing a serious health threat to livestock. The department shall determine and employ the most efficient and practical means to conduct surveillance for livestock diseases at such places as in livestock herds, at slaughter establishments, at livestock concentration points, and at other places where livestock are assembled. When the diseases are nonprogram diseases, surveillance shall be done when in concurrence with the owner of the premises where the surveillance is to be conducted, except that if the State Veterinarian determines, in consultation

and agreement with the respective livestock health committee described in subdivision (4) of this section, that the diseases may pose a serious threat to the livestock industry, the State Veterinarian may order surveillance to be conducted at any place where livestock are assembled. If an agreement between the State Veterinarian and the respective livestock health committee cannot be reached, the final decision shall be made by the director;

(4) Shall encourage involvement from livestock producers by forming livestock health committees to provide ways for producers to assist the department in developing policy regarding livestock disease issues. Membership of such committees shall be selected by the respective livestock groups. Additional appointments may be made by the director. The purpose of the committees is to advise and recommend, to the department, when a disease or diseases should be monitored by surveillance and what diseases should be considered for proposed legislation for a disease control eradication program;

(5) Shall provide voluntary livestock certification programs as provided in sections 10 to 16 of this act;

(6) Shall assist public health agencies, diagnostic laboratories, and researchers in conducting epidemiological studies of diseases known to be, or suspected of being, transmitted from livestock to humans;

(7) Shall cooperate and contract with persons or local, state, and national organizations, public or private, and enter into agreements with other state or federal agencies to allow such agencies' personnel to work in Nebraska and to allow the department's personnel to work in other states or with federal agencies under a cooperative work program; and

(8) Shall encourage the use of private accredited veterinarians whenever feasible in carrying out the provisions of sections 54-701 to 54-753.05 and sections 10 to 16 and 20 of this act. The Legislature further finds and declares that, without additional resources, the Department of Agriculture will not be able to (1) improve surveillance and compliance in regard to animal disease control to attain goals such as achieving and maintaining the United States Department of Agriculture's classification of Class Free State for brucellosis in cattle, (2) maintain and enhance the pseudorabies control and eradication program required by the Pseudorabies Control and Eradication Act, or (3) maintain current services to livestock producers due to the withdrawal of field staff from Nebraska by the Animal and Plant Health Inspection Service of the United States Department of Agriculture. The Department of Agriculture may employ special investigators pursuant to subdivision (7) of section 81-201 and other personnel deemed necessary to maintain and improve animal disease control in this state.

Sec. 3. Section 54-701.03, Revised Statutes Supplement, 2000, is amended to read:

54-701.03. For purposes of sections 54-701 to 54-705 and 54-742 to 54-753.05 and sections 10 to 16 and 20 of this act:

(1) Accredited veterinarian means a veterinarian approved by the deputy administrator of the United States Department of Agriculture in accordance with 9 C.F.R. part 161, as such regulation existed on the effective date of this act;

(2) Animal means all vertebrate members of the animal kingdom except humans or uncaptured wild animals;

(3) Bureau of Animal Industry means the Bureau of Animal Industry of the Department of Agriculture of the State of Nebraska and includes the State Veterinarian, deputy state veterinarian, veterinary field officers, livestock inspectors, investigators, and other employees of the bureau;

(4) Dangerous disease means a disease transmissible to and among livestock which has the potential for rapid spread, serious economic impact or serious threat to livestock health, and is of major importance in the trade of livestock and livestock products;

(5) Department means the Department of Agriculture of the State of Nebraska;

(6) Director means the Director of Agriculture of the State of Nebraska or his or her designee;

(7) ~~(2)~~ Domesticated cervine animal means any elk, deer, or other member of the family cervidae legally obtained from a facility which has a license, permit, or registration authorizing domesticated cervine animals which has been issued by the state where the facility is located and such animal is raised in a confined area;

(8) Exposed means being part of a herd which contains or has contained an animal infected with a disease agent which affects livestock or having had a reasonable opportunity to come in contact with an infective disease agent which affects livestock;

(9) Herd means any group of livestock maintained on common ground for any purpose or two or more groups of livestock under common ownership or

supervision geographically separated but which have an interchange of livestock without regard to health status;

(10) ~~(3)~~ Livestock means cattle, swine, sheep, horses, mules, goats, domesticated cervine animals, ratite birds, and poultry;

(11) ~~(4)~~ Poultry means domesticated birds that serve as a source of eggs or meat and includes, but is not limited to, chickens, turkeys, ducks, and geese; ~~and~~

(12) Program disease means a livestock disease for which specific legislation exists for disease control or eradication;

(13) Quarantine means restriction of (a) movement imposed by the department on an animal, group of animals, or herd of animals because of infection with, or exposure to, a disease agent which affects livestock and (b) use of equipment, facilities, land, buildings, and enclosures which are used or have been used by animals infected with, or suspected of being infected with, a disease agent which affects livestock;

(14) ~~(5)~~ Ratite bird means any ostrich, emu, rhea, kiwi, or cassowary;

(15) Sale means a sale, lease, loan, trade, or gift;

(16) Surveillance means the collection and testing of livestock blood, tissue, hair, body fluids, discharges, excrements, or other samples done in a herd or randomly selected livestock to determine the presence or incidence of disease in the state or area of the state; and

(17) Veterinarian means an individual who is a graduate of an accredited college of veterinary medicine.

Sec. 4. Section 54-703, Reissue Revised Statutes of Nebraska, is amended to read:

54-703. (1) The Department of Agriculture and all inspectors and persons appointed and authorized to assist in the work of ~~such the~~ department shall enforce ~~the provisions of~~ sections 54-701 to 54-753.05 and sections 10 to 16 and 20 of this act as designated.

(2) The department and any officer, agent, employee, or appointee of the department shall have the right to enter upon the premises of any person who has, or is suspected of having, any animal thereon, including any premises where the carcass or carcasses of dead livestock may be found or where a facility for the disposal or storage of dead livestock is located, for the purpose of making any and all inspections, examinations, tests, and treatments of such animal, to inspect livestock carcass disposal practices, and to declare, carry out, and enforce any and all quarantines.

(3) The department, in consultation with the Department of Environmental Quality and the Department of Health and Human Services Regulation and Licensure, may adopt and promulgate rules and regulations reflecting best management practices for the burial of carcasses of dead livestock.

(4) ~~The department~~ Department of Agriculture shall further adopt and promulgate such rules and regulations as are necessary to promptly and efficiently enforce and effectuate the general purpose and provisions of such sections.

Sec. 5. Section 54-704, Reissue Revised Statutes of Nebraska, is amended to read:

54-704. Any veterinary inspector or agent of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, who has been officially assigned by the ~~department~~ United States Department of Agriculture for service in Nebraska may be officially authorized by the Department of Agriculture to perform and exercise such powers and duties as may be prescribed by the department and when so authorized shall have and exercise all rights and powers vested by sections 54-701 to 54-753.05 and sections 10 to 16 and 20 of this act in agents and representatives in the regular employ of the department.

Sec. 6. Section 54-705, Reissue Revised Statutes of Nebraska, is amended to read:

54-705. The Department of Agriculture or any officer, agent, employee, or appointee thereof ~~shall have power to~~ may call upon any sheriff, deputy sheriff, or other police officer to execute the orders of the department, and the officer shall obey the orders of the department. The officers performing such duties shall receive compensation therefor as is prescribed by law for like services and shall be paid therefor by the county. Any officer may arrest and take before the county judge of the county any person found violating any of the provisions of sections 54-701 to 54-753.05 and section 20 of this act, and such officer shall immediately notify the county attorney of such arrest. The county attorney shall prosecute the person so offending according to law.

Sec. 7. Section 54-742, Reissue Revised Statutes of Nebraska, is

amended to read:

54-742. It shall be is the duty of any person who discovers, suspects, or has reason to believe that any animal belonging to him or her or which he or she has in his or her possession or custody or which, belonging to another, may come under his or her observation is affected with any dangerous, infectious, contagious, or otherwise transmissible disease which affects livestock to immediately report such fact, belief, or suspicion to the ~~Department of Agriculture~~ department or to any agent, employee, or appointee thereof.

The department shall work together with livestock health committees, livestock groups, diagnostic laboratories, practicing veterinarians, producers, and others who may be affected, to adopt and promulgate rules and regulations to effectuate a workable livestock disease reporting system according to the provisions of this section. The rules and regulations shall establish who shall report diseases, what diseases shall be reported, how such diseases shall be reported, to whom diseases shall be reported, the method by which diseases shall be reported, and the frequency of reports required. For disease reporting purposes, the department shall categorize livestock diseases according to relative economic or health risk factors and may provide different reporting measures for the various categories.

Sec. 8. Section 54-744, Revised Statutes Supplement, 2000, is amended to read:

54-744. (1) Except as set out in ~~subsection (2)~~ subsections (2) and (3) of this section, it is the duty of the owner or custodian of any dead animal which dies from and on account of any infectious, contagious, or otherwise transmissible disease to cause such animal, within thirty-six hours after receiving knowledge of the death of such animal, to be buried at least four feet below the surface of the ground or to be completely burned on the premises where such animal dies unless the animal is disposed of to a duly licensed rendering establishment in this state. Such animal shall not be moved or transported from the premises where such animal has died except by the authorized agents and employees of the rendering establishment to which such carcass is disposed. ~~Any animal which dies of disease or is found dead shall be presumed to have died from and on account of an infectious, contagious, or otherwise transmissible disease.~~

(2) Livestock carcasses up to ~~three~~ six hundred pounds may be incorporated into a composting facility on the premises where the livestock died and shall remain in such compost facility until completely composted before spreading on land. Any person incorporating livestock carcasses into a composting facility shall follow the operating procedures as set forth in the Journal of the American Veterinary Medical Association, Volume 210, No. 8. Not less than one copy of such journal, or portion thereof, shall be filed for use and examination by the public in the offices of the Clerk of the Legislature and the Secretary of State. The Department of Agriculture shall regulate the composting of livestock carcasses and shall adopt and promulgate rules and regulations governing the same, ~~by December 17, 2000,~~ which rules and regulations may incorporate or may modify the operating procedures set forth in this subsection.

(3) An animal carcass or carcass part may be transported by the owner or the owner's agent to a veterinary clinic or veterinary diagnostic laboratory for purposes of performing diagnostic procedures.

(4) Carcasses disposed of in compliance with this section or section 20 of this act are exempt from the requirements for disposal of solid waste under the Integrated Solid Waste Management Act.

Sec. 9. Section 54-746, Reissue Revised Statutes of Nebraska, is amended to read:

54-746. ~~No~~ Except as otherwise provided in this section, no person shall ship, trail, drive, or otherwise move, permit to be moved, or permit to be driven from one county in the state to any other county in the state, from one part of a county to another, or to any other state any animal which is affected or suspected of being affected with any dangerous, infectious, contagious, or otherwise transmissible disease without first having obtained a permit from the Department of Agriculture therefor. An animal may be transported by the owner or the owner's agent to and from a veterinary clinic or veterinary diagnostic laboratory for purposes of performing diagnostic procedures, examinations, treatments, or tests without obtaining such permit.

Sec. 10. The Department of Agriculture shall provide voluntary livestock certification programs when requested by a livestock health committee and others when deemed by the department to be beneficial and appropriate for the livestock industry. The department shall work together with the appropriate livestock producers or groups and the Department of Veterinary and Biomedical Sciences of the University of Nebraska to establish

procedures for the certification of participating herds. The Department of Agriculture may maintain, through the Bureau of Animal Industry, a livestock certification registry for each livestock certification program that provides information regarding the voluntary certification program and may include the names of participating livestock producers who have a herd or flock enrolled in the voluntary livestock certification program.

Sec. 11. A livestock producer may request certification by completing an application for herd certification on a form provided by the department. The livestock producers who choose to participate in a voluntary livestock certification program shall pay the primary costs of the program, including all on-farm testing costs. The department may use funds appropriated by the Legislature, when available, to offset the costs of disease research and laboratory testing when done in conjunction with a voluntary livestock certification program.

Sec. 12. A livestock producer who is listed in a livestock certification registry may provide registry and certification information regarding the livestock herd when selling livestock from the herd.

Sec. 13. (1) The department shall remove the name of a livestock producer from a livestock certification registry if the livestock producer has issued false records or statements or has made misleading claims to the department with regard to livestock certification when such records, statements, or claims cause, or could cause, the department to incorrectly include the name of a livestock producer in the certification registry.

(2) Before removal, the department shall notify the livestock producer in writing of the department's intention and the reasons for the intended removal from the registry. The notice shall inform the applicant of his or her right to request an administrative hearing before the director regarding his or her removal from the registry. A request for hearing shall be in writing and shall be filed with the department within thirty days after the service of the notice is made. If a request for hearing is filed within the thirty-day period, at least twenty days before the hearing the director shall notify the livestock producer of the time, date, and place of the hearing. Such proceeding may be appealed as a contested case under the Administrative Procedure Act.

(3) A livestock producer whose name is removed from a livestock certification registry for the first time shall not be eligible to reapply for twelve months from the date of removal. A livestock producer whose name is removed from a registry a subsequent time shall not be eligible to reapply for thirty-six months from the date of removal.

Sec. 14. The department and its representatives shall not be held liable for unintentional loss or damage which occurs during certification testing, surveillance and monitoring, disease reporting, or disease research and laboratory testing, or because of certification or lack thereof in a voluntary livestock certification program.

Sec. 15. Information collected or published by the department pursuant to sections 10 to 16 of this act shall not disclose the identity of individual livestock producers, except for:

(1) Information published in a livestock certification registry; and

(2) Information collected for the purpose of a voluntary livestock certification program that may be disclosed by the State Veterinarian when, in his or her judgment, failure to disclose the name of a livestock producer or producers could result in the spread of a dangerous, contagious, infectious, or otherwise transmissible disease to and among livestock.

Sec. 16. The department may establish procedures to implement sections 10 to 16 of this act.

Sec. 17. Section 54-751, Reissue Revised Statutes of Nebraska, is amended to read:

54-751. It shall be unlawful for any person to violate any rule or regulation prescribed and promulgated by the Department of Agriculture pursuant to authority granted by sections 54-701 to 54-753 and section 20 of this act, and any person so offending shall be deemed guilty of a Class II misdemeanor.

Sec. 18. Section 54-752, Reissue Revised Statutes of Nebraska, is amended to read:

54-752. Any person violating any of the provisions of sections 54-701 to 54-753, and section 20 of this act shall be guilty of a Class II misdemeanor.

Sec. 19. Section 54-753, Reissue Revised Statutes of Nebraska, is amended to read:

54-753. The penal provisions of section 54-752 shall not be exclusive, but the district courts of this state, in the exercise of their equity jurisdiction, shall have power may, by injunction, to compel the

observance of, and by that remedy enforce, the provisions of sections 54-701 to 54-753, and section 20 of this act and the rules and regulations established and promulgated by the Department of Agriculture.

Sec. 20. (1) Livestock carcasses may be disposed of in a research or demonstration facility for innovative livestock disposal methods registered with the Department of Agriculture, except that a research or demonstration facility of liquefaction shall not be registered under this section and liquefaction shall not be permitted as a method of livestock disposal. The registration of a facility under this section shall contain a description of the facility, the location and proposed duration of the research or demonstration, and a description of the method of disposal to be utilized. The department may register up to five such research or demonstration facilities conducted in conjunction with private livestock operations which meet all of the following conditions:

(a) The project is designed and conducted by one or more research faculty of the University of Nebraska;

(b) The project does not duplicate other research or demonstration projects;

(c) The project sponsors submit annual reports on the project and a final report at the conclusion of the project;

(d) The project employs adequate safeguards against disease transmission or environmental contamination; and

(e) The project meets any other conditions deemed prudent by the director.

(2) It is the intent of the Legislature that the department register at least one research or demonstration facility for innovative livestock disposal methods which shall be located upon the premises of each class of livestock waste control facility defined in section 54-2404. Before registering such facility, the department shall first consult with the Department of Environmental Quality and the Department of Health and Human Services Regulation and Licensure. The Department of Agriculture may revoke the registration of the facility at any time if the director has reason to believe that the facility no longer meets the conditions for registration.

(3) Only the carcasses of livestock that have died upon the livestock operation premises where a research or demonstration facility for innovative livestock disposal methods is located may be disposed of at such facility. Carcasses from other livestock operations shall not be transported to such facility for disposal.

(4) A facility registered under this section is exempt from the requirements for disposal of solid waste under the Integrated Solid Waste Management Act.

Sec. 21. Original sections 54-701, 54-701.02, 54-703 to 54-705, 54-742, 54-746, and 54-751 to 54-753, Reissue Revised Statutes of Nebraska, and sections 54-701.03 and 54-744, Revised Statutes Supplement, 2000, are repealed.