

LEGISLATIVE BILL 99

Approved by the Governor February 26, 2009

Introduced by Carlson, 38.

FOR AN ACT relating to agriculture; to amend section 54-744, Reissue Revised Statutes of Nebraska; to adopt the Anthrax Control Act; to provide penalties; to eliminate anthrax provisions and penalties; to harmonize provisions; to repeal the original section; to outright repeal sections 54-754, 54-755, 54-756, 54-757, 54-758, 54-759, 54-760, 54-761, 54-762, and 54-763, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Sections 1 to 18 of this act shall be known and may be cited as the Anthrax Control Act.

Sec. 2. The purpose of the Anthrax Control Act is to prevent, suppress, and control anthrax to protect the health of livestock within Nebraska.

Sec. 3. For purposes of the Anthrax Control Act:

(1) Accredited veterinarian means a veterinarian approved by the Administrator of the Animal and Plant Health Inspection Service of the United States Department of Agriculture in accordance with the provisions of 9 C.F.R. part 161, as such regulation existed on January 1, 2009;

(2) Affected herd means a herd which contains an animal infected with or exposed to anthrax;

(3) Affected premises means the land on which is located an animal infected with or exposed to anthrax and includes the buildings, holding facilities, and equipment located on such land;

(4) Animal means all vertebrate members of the animal kingdom except humans, fish, amphibians, reptiles, and wild animals at large;

(5) Approved laboratory means a laboratory designated by the department in rules and regulations;

(6) Department means the Department of Agriculture;

(7) Exposed means an animal or herd having or suspected of having contact (a) with animals infected with anthrax spores or organisms or (b) with premises which contain anthrax spores or organisms;

(8) Herd means (a) any group of livestock maintained on common ground for any purpose or (b) two or more groups of livestock under common ownership or supervision geographically separated but which have an interchange of livestock without regard to whether the livestock are infected or exposed;

(9) Herd plan means a written disease management plan that is designed by the herd owner or custodian in conjunction with the State Veterinarian to control and eradicate anthrax from an infected herd;

(10) Livestock means cattle, bison, swine, sheep, goats, equines, and domesticated cervine animals;

(11) Quarantine means the restriction imposed by the department (a) on the movement of an affected herd, (b) on the movement of an animal or a group of animals infected with or exposed to anthrax, (c) on the use of an affected premises, or (d) on the use of land where anthrax spores have been found and includes restriction of the buildings, holding facilities, and equipment upon such land; and

(12) State Veterinarian means the veterinarian appointed pursuant to section 81-202.01 or his or her designee.

Sec. 4. The Anthrax Control Act shall be administered and enforced by the department. In administering and enforcing the act:

(1) The department may cooperate and may contract with any person, including any local, state, or national organizations, public or private, for the performance of activities required or authorized pursuant to the act;

(2) The department may employ all general powers provided in sections 54-701 to 54-705 and 54-742 to 54-753 in administering the act;

(3) For purposes of access for (a) inspections, (b) tests, including the taking of samples, (c) treatments, or (d) carrying out and enforcing quarantines, agents and employees of the department shall have the right to enter upon any premises where livestock that are infected with or are suspected to be infected with anthrax are located. It shall be unlawful for any person to interfere in any way with or obstruct an agent or employee of the department from entering upon such premises for the purposes stated in this subdivision or to interfere in any way with the department in such work;

(4) The department may delegate to appropriate personnel any of the

responsibilities in this section for the proper administration of the act;

(5) The department may adopt and promulgate rules and regulations to aid in implementing the act. The rules and regulations may include, but are not limited to, establishing procedures for testing, vaccination, quarantine, cleaning and disinfection of affected premises, carcass disposal, designation of approved laboratories to confirm the presence of anthrax, submission of specimen samples, and diagnosis and confirmation of anthrax;

(6) The department may provide state funds to or on behalf of herd owners for certain activities or any portion thereof in connection with the implementation of the act if funds for any activities or any portion thereof have been appropriated and are available. The department may develop statewide priorities for the expenditure of state funds available for anthrax control activities; and

(7) Unless the Legislature appropriates funds to the department specifically for such purposes, the department shall not pay for (a) costs of gathering, confining, and restraining animals for vaccination or other anthrax control activities, (b) costs of providing necessary facilities and assistance, (c) indemnity for any animal destroyed as a result of being affected with anthrax, or (d) costs for carcass disposal and any disinfection or cleaning.

Sec. 5. Any person who discovers, suspects, or has reason to believe that an animal belonging to him, her, or another person or which he or she has in his or her possession or custody is exhibiting signs consistent with anthrax shall immediately report such fact, belief, or suspicion to the State Veterinarian.

Sec. 6. It shall be unlawful for any person to knowingly harbor, sell, or otherwise dispose of any animal, or carcass part thereof, that has been or is exposed to or infected with anthrax, except as otherwise provided in the Anthrax Control Act and any rules and regulations adopted and promulgated thereunder.

Sec. 7. The State Veterinarian shall immediately quarantine, at the expense of the owner or custodian, any affected herd and the affected premises. An animal or animals under quarantine may be relocated as directed by the State Veterinarian to avoid or lessen exposure to pathogenic agents. Quarantine restrictions imposed by the State Veterinarian as applied to the movement and disposition of an individual animal or a group of animals within an affected herd may vary as appropriate according to risk of exposure to pathogenic agents. It shall be unlawful for any person to remove an animal which has been placed under quarantine pursuant to the Anthrax Control Act from the place of quarantine until such quarantine is released by the State Veterinarian. An affected premises or any portion thereof which has been placed under quarantine shall remain under quarantine until released by the State Veterinarian.

Sec. 8. The herd owner or custodian, in cooperation with the department, shall develop a herd plan which may include (a) the vaccination, treatment, and testing of an infected herd, (b) cleaning and disinfection of premises of an infected herd, and (c) carcass disposal. A herd owner or custodian of an infected herd who fails to develop a herd plan or who fails to follow the herd plan is guilty of a Class I misdemeanor.

Sec. 9. It is unlawful for any person to prevent the testing, vaccination, and treatment of an affected herd. The owner or custodian of a herd ordered to be tested, vaccinated, or treated shall confine such herd in a suitable place determined by the department and shall furnish the necessary assistance and facilities for restraining the livestock as requested by the State Veterinarian.

Sec. 10. The sale and use of anthrax vaccine shall be in accordance with the following procedures:

(1) The department may restrict the sale and use of anthrax vaccine;

(2) Only anthrax vaccines which are licensed and approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services shall be used for the vaccination of livestock, and such vaccines shall be distributed by an accredited veterinarian licensed to practice in Nebraska;

(3) Records of all anthrax vaccine sales and purchases shall be retained by the prescribing or administering veterinarian for a period of five years. Such records shall be available for examination by the Department of Agriculture or its authorized representative during normal business hours. If requested by the department, a report of sales and purchases of anthrax vaccine shall be submitted to the department;

(4) An exposed herd may be vaccinated as deemed appropriate by the State Veterinarian;

(5) Infected herds shall be vaccinated, and such vaccine shall only

be administered by an accredited veterinarian licensed to practice in Nebraska or by a designee of the department; and

(6) Herd owners or custodians of nonaffected herds may purchase anthrax vaccine from an accredited veterinarian.

Sec. 11. For an affected herd that has experienced any death loss, the owner or custodian of the herd shall be responsible to have samples submitted to an approved laboratory for confirmation of anthrax.

Sec. 12. If an animal has, or is suspected to have, died of anthrax, it is unlawful to:

(1) Transport such animal or animal carcass, except as directed and approved by the department;

(2) Use the flesh or organs of such animal or animal carcass for food for livestock or human consumption; or

(3) Remove the skin or hide of such animal or animal carcass.

Sec. 13. (1) The disposition of any infected animal carcass shall be carried out under the direction of the department. It shall be the duty of the owner or custodian of an animal that has died of anthrax to bury or burn the carcass on the premises where the carcass is found, unless directed otherwise by the department. If such carcass is buried, no portion of the carcass shall be interred closer than six feet from the surface of the ground.

(2) The department may direct the owner or custodian of an infected herd to treat the herd and to clean and disinfect the premises in accordance with the herd plan.

Sec. 14. A confirmation of anthrax shall only be made by an approved laboratory.

Sec. 15. (1) The owner or custodian of an affected herd or affected premises shall be responsible to pay for costs related to: (a) The quarantine, testing, or vaccination of an affected herd; (b) the disinfection or cleaning of the premises of an affected herd; and (c) any other costs associated with the control of anthrax in such herd.

(2) The department may assess and collect payment for services provided and expenses incurred pursuant to its responsibilities under the Anthrax Control Act.

(3) Any person failing to carry out the responsibilities set out in the act and any rules and regulations adopted and promulgated thereunder shall be guilty of a Class I misdemeanor. Whenever any person fails to carry out such responsibilities under the act, the department may perform such functions. Upon completion of any required anthrax control activities, the department shall determine its actual costs incurred in handling the affected herd and affected premises and conducting the testing and notify the herd owner or custodian in writing. The herd owner or custodian shall reimburse the department its actual costs within fifteen days following the date of the notice. Any person failing to reimburse the department shall be assessed a late fee of up to twenty-five percent of the amount due for each thirty days of nonpayment to reimburse the department for its costs of collecting the amount due.

(4) Any costs and fees assessed and collected pursuant to this section shall be remitted to the State Treasurer for credit to the Anthrax Control Act Cash Fund.

(5) The Anthrax Control Act Cash Fund is created. The fund shall consist of money appropriated by the Legislature and gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The fund shall be used to carry out the Anthrax Control Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 16. (1) To obtain compliance with the Anthrax Control Act, the department may apply for a temporary restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or any rules or regulations adopted and promulgated thereunder. The district court of the county where the violation is occurring or is about to occur has jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) The Attorney General or the county attorney of the county where violations of the act or any rules or regulations adopted and promulgated thereunder are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under subsection (1) of this section to be instituted and pursued without delay and shall prosecute violations under sections 8, 15, and 18 of this act without delay.

Sec. 17. The department is not liable for actual or incidental costs

incurred by any person due to departmental actions in enforcing the Anthrax Control Act unless such costs are clearly unreasonable or result from the gross or willful negligence of the department or its employees or agents.

Sec. 18. Any person violating the Anthrax Control Act or any rules or regulations adopted and promulgated thereunder for which no penalty is otherwise provided is guilty of a Class I misdemeanor.

Sec. 19. Section 54-744, Reissue Revised Statutes of Nebraska, is amended to read:

54-744 (1) Except as set out in subsections (2) and (3) of this section and section 13 of this act, it is the duty of the owner or custodian of any dead animal 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.

(2) Livestock carcasses up to 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, 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 54-744.01 are exempt from the requirements for disposal of solid waste under the Integrated Solid Waste Management Act.

Sec. 20. Original section 54-744, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 21. The following sections are outright repealed: Sections 54-754, 54-755, 54-756, 54-757, 54-758, 54-759, 54-760, 54-761, 54-762, and 54-763, Reissue Revised Statutes of Nebraska.

Sec. 22. Since an emergency exists, this act takes effect when passed and approved according to law.