

E AND R AMENDMENTS TO LB 68

Introduced by Murante, 49, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 2-1072, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 2-1072 Sections 2-1072 to 2-10,117 and sections 3, 4, 5,
6 7, and 11 of this act shall be known and may be cited as the Plant
7 Protection and Plant Pest Act.

8 Sec. 2. Section 2-1074, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 2-1074 For purposes of the Plant Protection and Plant
11 Pest Act, unless the context otherwise requires, the definitions
12 found in sections 2-1074.01 to 2-1089 and sections 3, 4, 5, and 7
13 of this act shall be used.

14 Sec. 3. Certification inspection of Nebraska-grown
15 nursery stock shall mean an inspection performed pursuant to
16 section 2-1095.

17 Sec. 4. Grow shall mean to produce a plant or plant
18 product, by propagation or cultivation, including, but not limited
19 to, division, transplant, seed, or cutting, generally over a period
20 of one year or greater. Grow does not include transferring nursery
21 stock from one container to another or potting bare-root nursery
22 stock, if the stock will be distributed within twelve months.

23 Sec. 5. Harmonization plan shall mean any agreement

1 between states, or a state or states and the federal government,
2 designed to limit the spread of a plant pest into or out of a
3 designated area.

4 Sec. 6. Section 2-1083, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 2-1083 Nursery stock shall mean ~~all field-grown or~~
7 ~~container-grown perennial plants,~~ including, but not limited to,
8 vegetative or propagative parts of perennial plants dug from the
9 wild, so labeled, and distributed, and excluding, among other
10 things, greenhouse plants grown for indoor use, annual plants,
11 biennial plants, florist stock, cut flowers, sod, turf, onions, or
12 potatoes, or seeds of any such plant, all botanically classified
13 hardy perennial or biennial plants, trees, shrubs, and vines,
14 either domesticated or wild, cuttings, grafts, scions, buds, bulbs,
15 rhizomes, or roots thereof, and such plants and plant parts for,
16 or capable of, propagation, excluding plants grown for indoor
17 use, annual plants, florist stock, cut flowers, sod, turf, onions,
18 potatoes, or seeds of any such plant.

19 Sec. 7. Nursery stock distributor shall mean any person
20 involved in:

21 (1) The acquisition and further distribution of nursery
22 stock;

23 (2) The utilization of nursery stock for landscaping or
24 purchase of nursery stock for other persons;

25 (3) The distribution of nursery stock with a mechanical
26 digger, commonly known as a tree spade, or by other means;

27 (4) The solicitation of or taking orders for sales of

1 nursery stock in the state; or

2 (5) The growing and distribution of nursery stock or
3 active involvement in the management or supervision of a nursery.

4 Sec. 8. Section 2-1091, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 2-1091 For the purpose of enforcement of the Plant
7 Protection and Plant Pest Act or any rule or regulation, the
8 department may:

9 (1) Enter ~~and inspect~~ at reasonable times and in
10 a reasonable manner without being subject to any action for
11 trespass or damages, if reasonable care is exercised, all property
12 where plants are grown, packed, held prior to distribution,
13 or distributed ~~and~~ to inspect all plants, structures, vehicles,
14 equipment, packing materials, containers, records, and labels on
15 such property. The department may inspect and examine all records
16 and property relating to compliance with the act. Such records and
17 property shall be made available to the department for review at
18 all reasonable times;

19 (2) In a reasonable manner, hold for inspection and take
20 samples of any plants and associated materials which may not be in
21 compliance with the act;

22 (3) Inspect or reinspect at any time or place any plants
23 that are in the state or being shipped into or through the state
24 and treat, seize, destroy, require treatment or destruction of, or
25 return to the state of origin any plants in order to inhibit or
26 prevent the movement of plant pests throughout the state;

27 (4) Obtain an inspection warrant in the manner prescribed

1 in sections 29-830 to 29-835 from a court of record if any
2 person refuses to allow the department to inspect pursuant to this
3 section;

4 (5) Issue a written or printed
5 withdrawal-from-distribution order and post signs to
6 delineate sections not marked pursuant to ~~subdivision (6)~~
7 subsection (3) of section ~~2-1092~~ 2-1095 or sections of distribution
8 locations and to notify persons of any withdrawal-from-distribution
9 order when the department has reasonable cause to believe any lot
10 of nursery stock is being distributed in violation of the act or
11 any rule or regulation;

12 (6) Apply for a restraining order, a temporary or
13 permanent injunction, or a mandatory injunction against any person
14 violating or threatening to violate the act or the rules and
15 regulations. The district court of the county where the violation
16 is occurring or is about to occur shall have jurisdiction to
17 grant such relief upon good cause shown. Relief may be granted
18 notwithstanding the existence of any other remedy at law and shall
19 be granted without bond;

20 (7) Issue a quarantine or establish a quarantine area;

21 (8) Cooperate and enter into agreements, including
22 harmonization plans, with any person in order to carry out the
23 purpose of the act;

24 (9) Establish a restricted plant pest list to prohibit
25 the movement into the state of plant pests not known to occur in
26 Nebraska and to prohibit the movement of those plant pests present
27 in the state but known to be destructive to the plant industry;

1 (10) Issue European corn borer quarantine certificates,
2 phytosanitary certificates, and export certificates on plants for
3 individual shipment to other states or foreign countries if those
4 plants comply with the requirements or regulations of such state
5 or foreign country or issue quarantine compliance agreements or
6 European corn borer quarantine certification licenses;

7 (11) Inspect plants that any person desires to ship
8 into another state or country when such person has made an
9 application to the department for such inspection. The inspection
10 shall determine the presence of plant pests to determine the
11 acceptance of the plants into other states or countries. The
12 department may accept the inspections of laboratories authorized by
13 the department or field inspectors of the department;

14 (12) Certify plants or property to meet the requirements
15 of specific quarantines imposed on Nebraska or Nebraska plants.
16 The quarantine certification requirements shall be set forth in the
17 rules and regulations;

18 (13) Assess Until increased or decreased by rules or
19 regulations, assess and collect charges fees set forth in section
20 11 of this act for inspections, services, or work performed
21 in carrying out subdivisions (8) and (10) through (12) of
22 this section. ~~Such charges shall not exceed the actual cost of~~
23 ~~accomplishing such work.~~ Inspection time shall include the driving
24 to and from the location of the inspection in addition to the time
25 spent conducting the inspection, and the mileage charge shall be
26 for the purpose of inspection. Any fee charged to the department
27 relating to such subdivisions shall be paid by the person

1 requesting the inspection, services, or work. The department may,
2 for purposes of administering ~~subdivisions (10) through (12) of~~
3 ~~this section~~ such subdivisions, establish in rules and regulations
4 ~~such items as charges,~~ inspection requirements, standards, and
5 issuance, renewal, or revocation of licenses, certificates, or
6 ~~permits~~ agreements necessitated by such subdivisions;

7 (14) Conduct continuing survey and detection programs on
8 plant pests to monitor the population or spread of plant pests;

9 (15) Issue, place on probation, suspend, or revoke
10 licenses ~~required by~~ issued or agreements entered into pursuant
11 to the act or deny applications for such licenses or agreements
12 pursuant to the act; and

13 (16) Issue orders imposing administrative fines or cease
14 and desist orders pursuant to the act.

15 Sec. 9. Section 2-1091.01, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 2-1091.01 (1) A person shall not operate as a ~~grower, a~~
18 ~~dealer, or a collector~~ nursery stock distributor without a valid
19 license issued by the department. A person licensed as a grower
20 shall not be required to obtain a separate dealer's license. Any
21 person validly licensed as a grower, a dealer, or a broker under
22 the Plant Protection and Plant Pest Act as it existed on the day
23 before the effective date of this act shall remain validly licensed
24 until December 31, 2013.

25 ~~On or after December 31, 1993, a person shall not operate~~
26 ~~as a broker without a valid license issued by the department.~~

27 (2) ~~Application~~ Each nursery stock distributor shall

1 apply for a license required by subsection (1) of this section
2 ~~shall be made to the director~~ on forms furnished by the department
3 due on January 1 for the current license year. Such application
4 shall include the full name and mailing address of the applicant,
5 the names and addresses of any partners, limited liability company
6 members, or corporate officers, the name and address of the person
7 authorized by the applicant to receive notices and orders of the
8 department as provided in the Plant Protection and Plant Pest
9 Act, whether the applicant is an individual, partnership, limited
10 liability company, corporation, or other legal entity, the location
11 of the operation, and the signature of the applicant. A person
12 distributing greenhouse plants grown for indoor use, annual plants,
13 ~~biennial plants,~~ florist stock, cut flowers, sod, turf, onions, or
14 potatoes, or seeds of any such plant, shall not be required to
15 obtain a license but may do so pursuant to section 2-10,105.

16 (3) A nursery stock distributor license shall expire on
17 December 31 of each year unless previously lapsed or revoked.

18 (4) All applications shall be accompanied by a license
19 fee for the first acre on which nursery stock is located. If the
20 nursery stock distributor does not have physical possession of
21 nursery stock, the nursery stock distributor shall pay a license
22 fee based on one acre. Additionally the applicant shall pay an
23 acreage fee for each additional acre on which nursery stock is
24 located. The fees for a nursery stock distributor are set forth
25 in section 11 of this act and may be increased or decreased by
26 rules and regulations. If the applicant has distributed nursery
27 stock prior to applying for a license, the applicant shall pay an

1 additional administrative fee as set forth in section 11 of this
2 act.

3 (5) All nursery stock distributed by a nursery stock
4 distributor shall be only sound, healthy nursery stock that
5 is reasonably capable of growth, labeled correctly, free from
6 injurious plant pests, and stored or displayed under conditions
7 which maintain its vigor as provided in the rules and regulations.
8 Any fee charged to the department for diagnostic services or
9 shipping costs shall be paid by the nursery stock distributor.

10 (6) A valid copy of the nursery stock distributor's
11 license shall be posted in a conspicuous place at the distribution
12 location.

13 (7) A nursery stock distributor shall obtain a license
14 for each distribution location.

15 ~~(3)~~ (8) Each applicant for a nursery stock distributor
16 license shall furnish a signed written statement that such person
17 will acquire and distribute only nursery stock which has been
18 distributed by a person who is duly licensed pursuant to the act
19 or approved by an authorizing agency within the state of origin
20 recognized by the department.

21 ~~(4)~~ (9) Every licensee nursery stock distributor shall
22 continually maintain a complete and accurate list with the
23 department of all sources from which nursery stock is ~~obtained.~~
24 received.

25 ~~(5)~~ (10) Each licensee nursery stock distributor shall
26 keep and make available for examination by the department for
27 a period of three years an accurate record of all transactions

1 conducted in the ordinary course of business. Records pertaining
2 to such business shall at a minimum include the names of the
3 persons from which nursery stock was received, the receiving date,
4 the amount received, and the variety and place of origin of
5 the nursery stock received and all documents accompanying each
6 shipment indicating compliance with state or federal requirements
7 and quarantines. A ~~broker's~~ records shall also include the names
8 of the persons to which nursery stock was delivered, the delivery
9 date, the amount delivered, and the variety and place of origin of
10 the nursery stock delivered.

11 ~~(6)~~ (11) A nursery stock distributor license shall lapse
12 automatically upon a change of ownership, and the subsequent owner
13 must obtain a new license. The nursery stock distributor license
14 of a grower, dealer, or collector shall lapse automatically upon a
15 change of location, and such licensee must obtain a new license.
16 A licensee shall notify the department in writing at least thirty
17 days prior to any change in ownership, name, or address. A licensee
18 nursery stock distributor shall notify the department in writing
19 before there is a change of the name or address of the person
20 authorized to receive notices and orders of the department. When a
21 licensee nursery stock distributor permanently ceases operating, he
22 or she shall return the license to the department.

23 Sec. 10. Section 2-1095, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 2-1095 (1) All nursery stock distributors that distribute
26 any nursery stock that they grow shall apply for an additional
27 inspection for the certification of the Nebraska-grown nursery

1 stock as provided in this section. The nursery stock distributor
2 shall apply for such certification inspection of the Nebraska-grown
3 nursery stock as part of the application for the nursery stock
4 distributor license described in section 2-1091.01.

5 (2) (a) Applications for certification inspection of
6 Nebraska-grown nursery stock that are due on January 1 pursuant
7 to section 2-1091.01 and are not received prior to February
8 1 and initial applications not received prior to beginning of
9 distribution shall be considered delinquent. Such applications
10 shall have an inspection fee of actual costs assessed to the
11 applicant as set forth in section 11 of this act. Such fees may be
12 increased or decreased by rules and regulations.

13 (b) Inspection time shall include the driving time to and
14 from the location of the inspection in addition to the time spent
15 conducting the inspection, and the mileage charge shall be for the
16 purpose of inspection.

17 (3) Each nursery stock distributor shall post signs
18 delineating sections of all growing areas. A section shall be not
19 larger than five acres.

20 (4) All growing areas within the state shall be inspected
21 by the department at least once per year for certification and
22 compliance with the Plant Protection and Plant Pest Act.

23 ~~(1)~~ (5) Following the certification inspection of
24 Nebraska-grown nursery stock, the department shall provide a
25 copy of the plant inspection report to the grower nursery stock
26 distributor specifying any area of the nursery from which nursery
27 stock cannot be distributed or any plants which may not be

1 distributed as nursery stock. When deemed necessary to maintain
2 compliance with the purposes of the Plant Protection and Plant
3 Pest Act, the department shall require the ~~grower~~ nursery stock
4 distributor to withdraw from distribution any variety or amount of
5 nursery stock. A reinspection may be conducted by the department
6 at the ~~grower's~~ nursery stock distributor's request and cost. The
7 department may also reinspect to determine compliance with the
8 act. To determine the cost of any reinspection, the department
9 shall use ~~rates~~ fees as outlined in ~~subdivision (4)~~ of section
10 ~~2-1092-~~ subsection (2) of this section. The ~~grower~~ nursery stock
11 distributor shall comply with the recommendations of the department
12 as to the treatment or destruction of nursery stock.

13 ~~(2)~~ (6) The department may require the treatment or
14 destruction of any nursery stock that is infested or infected with
15 plant pests, nonviable, damaged, or desiccated to the point of not
16 being reasonably capable of growth.

17 ~~(3)~~ (7) Any nursery stock on which a
18 withdrawal-from-distribution order has been issued shall
19 be released for distribution only by authorized department
20 employees or after written permission has been obtained from
21 the department. Each ~~grower~~ nursery stock distributor shall
22 promptly report to the department, in writing, the amount and
23 type of plants treated or destroyed under requirements on
24 withdrawal-from-distribution orders. The department may withhold
25 a ~~grower's~~ license or certification of Nebraska-grown nursery
26 stock until conditions have been met by the ~~grower~~ nursery
27 stock distributor as specified in the plant inspection report

1 or any other order issued by the department. A ~~grower's~~ license
2 certification of Nebraska-grown stock may be issued covering
3 portions of the nursery which are not infested or infected if
4 the ~~grower~~ nursery stock distributor agrees to treat, destroy,
5 or remove as specified by the department those plants found to
6 be infested or infected.

7 Sec. 11. (1) Fees for the Plant Protection and Plant Pest
8 Act are set forth in the table in this subsection.

<u>Fee Type</u>	<u>Fee</u>	<u>Maximum fee</u> <u>if increased</u> <u>by rules</u> <u>and regulations</u>
<u>Nursery stock</u> <u>distributor license</u> <u>as set forth in</u> <u>section 2-1091.01</u> <u>for the first acre</u>	<u>\$115</u>	<u>\$140</u>
<u>Fee for additional</u> <u>acres</u>	<u>\$5.00 per acre</u>	<u>\$6.00 per acre</u>
<u>Distributing without</u> <u>obtaining a nursery</u> <u>stock distributor</u> <u>license fee</u>	<u>25% of the fee</u> <u>per month up to</u> <u>100% of the</u> <u>license fee</u>	
<u>Certification fee for</u>		

1	<u>nursery stock growing</u>		
2	<u>acres as set forth in</u>	<u>Included in</u>	
3	<u>section 2-1095</u>	<u>license fee</u>	
4	<u>Late applications for</u>		
5	<u>certification of nursery</u>	<u>\$24 per hour</u>	<u>\$27 per hour</u>
6	<u>stock growing acres</u>	<u>\$0.42 per mile</u>	<u>\$0.50 per mile</u>
7	<u>Reinspections or</u>		
8	<u>requested inspections</u>	<u>\$24 per hour</u>	<u>\$27 per hour</u>
9	<u>for nursery stock</u>	<u>\$0.42 per mile</u>	<u>\$0.50 per mile</u>
10	<u>Phytosanitary or</u>	<u>\$30 per certificate</u>	<u>\$40 per</u>
11	<u>export certificates</u>	<u>and \$7 for taking</u>	<u>certificate and</u>
12	<u>set forth in</u>	<u>an application</u>	<u>\$10 for taking</u>
13	<u>section 2-1091</u>	<u>by telephone</u>	<u>an application</u>
14			<u>by telephone</u>
15	<u>Phytosanitary or</u>		
16	<u>export certificate</u>		
17	<u>inspections and</u>	<u>\$24 per hour</u>	<u>\$27 per hour</u>
18	<u>reinspections</u>	<u>\$0.42 per mile</u>	<u>\$0.50 per mile</u>
19	<u>European corn borer</u>		
20	<u>quarantine certification</u>		
21	<u>license set forth in</u>	<u>\$50 per license,</u>	<u>\$65 per license,</u>
22	<u>section 2-1091</u>	<u>annually</u>	<u>annually</u>

1	<u>European corn borer</u>	<u>\$6.25 for</u>	<u>\$10.00 for</u>
2	<u>certificate</u>	<u>packet of 25</u>	<u>packet of 25</u>
3	<u>Quarantine compliance</u>		
4	<u>agreements as set</u>	<u>\$50 per agreement</u>	<u>\$65 per agreement</u>
5	<u>forth in section 2-1091</u>	<u>annually</u>	<u>annually</u>
6	<u>Quarantine compliance</u>		
7	<u>agreement inspections</u>	<u>\$24 per hour</u>	<u>\$27 per hour</u>
8	<u>and reinspections</u>	<u>\$0.42 per mile</u>	<u>\$0.50 per mile</u>

9 (2) Any fee remaining unpaid for more than one month
10 shall be considered delinquent, and the person owing the fee shall
11 pay an additional administrative fee of twenty-five percent of the
12 delinquent amount for each month it remains unpaid, not to exceed
13 one hundred percent of the original amount due. The department may
14 wave the additional administrative fee based upon the existence
15 and extent of any mitigating circumstances that have resulted
16 in the late payment of such fee. The purpose of the additional
17 administrative fee is to cover the administrative costs associated
18 with collecting fees, and all money collected as an additional
19 administrative fee shall be remitted to the State Treasurer for
20 credit to the Plant Protection and Plant Pest Cash Fund.

21 Sec. 12. Section 2-10,102, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 2-10,102 Collectors shall be required to obtain a
24 grower's nursery stock distributor's license and shall be subject
25 to all the requirements that apply to the inspection of nursery

1 ~~stock~~ required to apply for an additional inspection for the
2 certification of the collected nursery stock as provided in section
3 2-1095. All collected nursery stock shall be labeled as such.

4 Sec. 13. Section 2-10,103, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 2-10,103 A ~~licensee~~ nursery stock distributor shall:

7 (1) Comply with the Plant Protection and Plant Pest Act
8 and the rules and regulations:

9 (a) In the care of nursery stock;

10 (b) In the distribution of nursery stock including
11 nursery stock that has been withdrawn from distribution;

12 (c) Regarding treatment or destruction of nursery stock
13 as required by a withdrawal-from-distribution order;

14 (d) In maintaining the nursery stock in a manner
15 accessible to the department; and

16 (e) In the payment of license fees;

17 (2) Comply with any order of the director issued pursuant
18 to the act;

19 (3) Not distribute nursery stock obtained from an
20 unlicensed ~~grower or dealer~~, nursery stock distributor;

21 (4) Not allow the license to be used by any person other
22 than the person to whom it was issued; and

23 (5) Not interfere with the department in the performance
24 of its duties.

25 Sec. 14. Section 2-10,103.01, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 2-10,103.01 (1) A ~~licensee~~ nursery stock distributor may

1 be placed on probation requiring such person to comply with the
2 conditions set out in an order of probation issued by the director
3 or be ordered to cease and desist from failing to comply or
4 be ordered to pay an administrative fine pursuant to section
5 2-10,103.02 after:

6 (a) The director determines the licensee nursery stock
7 distributor has not complied with section 2-10,103;

8 (b) The licensee nursery stock distributor is given
9 written notice to comply and written notice of the right to a
10 hearing to show cause why the specified order should not be issued;
11 and

12 (c) The director finds that issuing the specified order
13 is appropriate based on the hearing record or the available
14 information if the hearing is waived by the licensee- nursery stock
15 distributor.

16 (2) A license nursery stock distributor may be suspended
17 after:

18 (a) The director determines the licensee nursery stock
19 distributor has not complied with section 2-10,103;

20 (b) The licensee nursery stock distributor is given
21 written notice to comply and written notice of the right to a
22 hearing to show cause why the license should not be suspended; and

23 (c) The director finds that issuing an order suspending
24 the license is appropriate based on the hearing record or the
25 available information if the hearing is waived by the licensee-
26 nursery stock distributor.

27 (3) A license may be immediately suspended and the

1 director may order the licensee's nursery stock distributor's
2 operation to cease prior to hearing when:

3 (a) The director determines an immediate danger to the
4 public health, safety, or welfare exists; ~~in the licensee's~~
5 ~~operation;~~ and

6 (b) The licensee nursery stock distributor receives
7 written notice to comply and written notice of the right to a
8 hearing to show cause why the suspension should not be sustained.
9 Within fifteen days after the suspension, the licensee nursery
10 stock distributor may request in writing a date for a hearing and
11 the director shall consider the interests of the licensee nursery
12 stock distributor when the director establishes the date and time
13 of the hearing, except that no hearing shall be held sooner than is
14 reasonable under the circumstances. When a licensee nursery stock
15 distributor does not request a hearing date within such fifteen-day
16 period, the director shall establish a hearing date and notify the
17 licensee nursery stock distributor of the date and time of such
18 hearing.

19 (4) A license may be revoked after:

20 (a) The director determines the licensee nursery stock
21 distributor has committed serious, repeated, or multiple violations
22 of any of the requirements of section 2-10,103;

23 (b) The licensee nursery stock distributor is given
24 written notice to comply and written notice of the right to a
25 hearing to show cause why the license should not be revoked; and

26 (c) The director finds that issuing an order revoking
27 the license is appropriate based on the hearing record or on the

1 available information if the hearing is waived by the ~~licensee-~~
2 nursery stock distributor.

3 (5) Any licensee nursery stock distributor whose license
4 has been suspended shall cease operations until the license is
5 reinstated. Any licensee nursery stock distributor whose license is
6 revoked shall cease operating until a new license is issued.

7 (6) The director may terminate a proceeding to suspend or
8 revoke a license or subject a licensee nursery stock distributor
9 to an order of the director described in subsection (1) of this
10 section at any time if the reasons for such proceeding no longer
11 exist. A license which has been suspended may be reinstated, a
12 person with a revoked license may be issued a new license, or a
13 licensee nursery stock distributor may no longer be subject to the
14 director's order if the director determines that the conditions
15 which prompted the suspension, revocation, or order of the director
16 no longer exist.

17 (7) Proceedings to suspend or revoke a license or subject
18 a licensee nursery stock distributor to an order of the director
19 described in subsection (1) of this section shall not preclude the
20 department from pursuing other civil or criminal actions.

21 Sec. 15. Section 2-10,103.02, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 2-10,103.02 (1) ~~Pursuant to section 2-10,103.01, the~~ The
24 director may issue an order imposing an administrative fine on a
25 licensee any person who has violated any provision, requirement,
26 condition, limitation, or duty imposed by the Plant Protection and
27 Plant Pest Act or rules and regulations adopted and promulgated

1 pursuant to the act in an amount which shall not exceed five
2 hundred dollars. one thousand dollars for each violation. A
3 violation means each action which violates any separate or distinct
4 provision, requirement, condition, limitation, or duty imposed by
5 the act or such rules and regulations. In determining whether to
6 impose an administrative fine and, if a fine is imposed, the amount
7 of the fine, the director shall take into consideration (a) the
8 seriousness of the violation, (b) the extent to which the licensee
9 person derived financial gain as a result of his or her failure
10 to comply, (c) the extent of intent, willfulness, or negligence by
11 the licensee person in the violation, (d) the likelihood of the
12 violation reoccurring, (e) the history of the licensee's person's
13 failure to comply, (f) the licensee's person's attempts to prevent
14 or limit his or her failure to comply, (g) the licensee's person's
15 willingness to correct violations, (h) the nature of the licensee's
16 person's disclosure of violations, (i) the licensee's person's
17 cooperation with investigations of his or her failure to comply,
18 and (j) any factors which may be established by the rules and
19 regulations.

20 (2) All money collected by the department as an
21 administrative fine shall be remitted on a monthly basis to
22 the State Treasurer for credit to the permanent school fund. The
23 department shall remit administrative fines collected under the
24 act to the State Treasurer on a monthly basis for distribution in
25 accordance with Article VII, section 5, of the Constitution of
26 Nebraska.

27 (3) Any administrative fine imposed under the Plant

1 Protection and Plant Pest Act and unpaid shall constitute a debt to
2 the State of Nebraska which may be collected by lien foreclosure or
3 sued for and recovered in any proper form of action in the name of
4 the State of Nebraska in the district court of the county in which
5 the violator resides or owns property. The lien shall attach to
6 the real estate of the violator when notice of such lien is filed
7 and indexed against the real estate in the office of the register
8 of deeds or county clerk in the county where the real estate is
9 located.

10 Sec. 16. Section 2-10,103.04, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 2-10,103.04 (1) Any notice or order provided for in the
13 Plant Protection and Plant Pest Act shall be personally served on
14 the licensee person holding the nursery stock distributor license,
15 the person named in the notice, or ~~on~~ the person authorized by the
16 licensee person holding the nursery stock distributor license to
17 receive notices and orders of the department or shall be sent by
18 certified mail, return receipt requested, to the last-known address
19 of the licensee person holding the nursery stock distributor
20 license, the person named in the notice, or the person authorized
21 to receive such notices and orders. A copy of the notice and the
22 order shall be filed in the records of the department.

23 (2) Any notice to comply provided for in the act shall
24 set forth the acts or omissions with which the licensee person
25 holding the nursery stock distributor license or the person named
26 in the notice is charged.

27 (3) A notice of the licensee's right of the person

1 holding the nursery stock distributor license or the person named
2 in the notice to a hearing provided for in the act shall set forth
3 the time and place of the hearing except as otherwise provided in
4 subsection (3) of section 2-10,103.01. A notice of the licensee's
5 right of the person holding the nursery stock distributor license
6 or the person named in the notice to such hearing shall include
7 notice that the licensee's right of the person holding the nursery
8 stock distributor license or the person named in the notice to a
9 hearing may be waived pursuant to subsection (5) of this section. A
10 notice of the licensee's right to a hearing to show cause why the
11 license should not be revoked shall include notice to the licensee
12 that the license may be revoked or suspended, that the licensee may
13 be subject to an order of the director described in subsection (1)
14 of section 2-10,103.01, or that the license may be suspended and
15 the licensee subject to such an order if the director determines
16 such action is more appropriate. A notice of the licensee's right
17 to a hearing to show cause why the license should not be suspended
18 shall include notice to the licensee that the license may be
19 suspended or that the licensee may be subject to an order of the
20 director described in subsection (1) of section 2-10,103.01 if the
21 director determines such action is more appropriate. A notice of
22 such right to a hearing shall include notice of the potential
23 actions that may be taken against the person holding the nursery
24 stock distributor license or the person named in the notice.

25 (4) The hearings provided for in the act shall be
26 conducted by the director at a time and place he or she designates.
27 The director shall make a final finding based upon the complete

1 hearing record and issue an order. If the director has suspended
2 a license pursuant to subsection (3) of section 2-10,103.01, the
3 director shall sustain, modify, or rescind the order. All hearings
4 shall be in accordance with the Administrative Procedure Act.

5 (5) A licensee The person holding the nursery stock
6 distributor license or the person named in the notice shall be
7 deemed to waive the right to a hearing if such licensee person
8 does not come to the hearing at the time and place set forth in
9 the notice described in subsection (3) of this section without
10 requesting the director at least two days before the designated
11 time to change the time and place for the hearing, except that
12 before an order of the director becomes final, the director may
13 designate a different time and place for the hearing if the
14 licensee person shows the director that the licensee person had a
15 justifiable reason for not coming to the hearing and not timely
16 requesting a change in the time and place for such hearing. If
17 the licensee person holding the nursery stock distributor license
18 or the person named in the notice waives the right to a hearing,
19 the director shall make a final finding based upon the available
20 information and issue an order. If the director has suspended a
21 license pursuant to subsection (3) of section 2-10,103.01, the
22 director shall sustain, modify, or rescind the order.

23 (6) Any person aggrieved by the finding of the director
24 shall have ten days from the entry of the director's order to
25 request a new hearing if such person can show that a mistake of
26 fact has been made which affected the director's determination. Any
27 order of the director shall become final upon the expiration of ten

1 days after its entry if no request for a new hearing is made.

2 Sec. 17. Section 2-10,104, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 2-10,104 (1) Any person residing outside the state and
5 desiring to solicit orders or distribute nursery stock in Nebraska
6 may do so if:

7 (a) Such person is duly licensed under the nursery laws
8 of the state where the nursery stock originates and the laws of
9 that state are essentially equivalent to the laws of Nebraska as
10 determined by the department; and

11 (b) Such person complies with the Plant Protection and
12 Plant Pest Act and the rules and regulations on all nursery stock
13 distributed in Nebraska.

14 (2) The department may cooperate with and enter into
15 reciprocal agreements with other states regarding licensing and
16 movement of nursery stock. Reciprocal agreements with other states
17 shall not prevent the department from prohibiting the distribution
18 in Nebraska of nursery stock which fails to meet the minimum
19 criteria for nursery stock of Nebraska-licensed ~~growers, dealers,~~
20 ~~or both.~~ nursery stock distributors.

21 Sec. 18. Section 2-10,105, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 2-10,105 (1) Optional inspections of plants may be
24 conducted by the department upon request by any persons desiring
25 such inspection. A fee as set forth in ~~subdivision (4)~~ subsection
26 (2) of section ~~2-1092~~ 2-1095 shall be charged for such an
27 inspection.

1 (2) Any person who desires a ~~grower's~~ nursery stock
2 distributor's license for any greenhouse plants grown for indoor
3 use, annual plants, ~~biennial plants,~~ florist stock, cut flowers,
4 sod, turf, onions, or potatoes, or seeds of any such plant, may
5 apply for such license to the department. The inspection of such
6 plants shall conform to the same requirements that apply to the
7 inspection of nursery stock as set forth in ~~sections 2-1091.01 to~~
8 ~~2-1096-~~ section 2-1095. For persons who grow or distribute both
9 nursery stock and greenhouse plants grown for indoor use, annual
10 plants, ~~biennial plants,~~ florist stock, cut flowers, sod, turf,
11 onions, or potatoes, or seeds of any such plant, one license shall
12 be issued if the annual inspection of such plants is conducted
13 concurrently with the nursery stock inspection and the other
14 requirements of the Plant Protection and Plant Pest Act are met. If
15 a reinspection trip is required, the applicant shall be assessed a
16 reinspection fee as outlined in ~~subdivision (4) of section 2-1092-~~
17 subsection (2) of section 2-1095.

18 Sec. 19. Section 2-10,106, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 2-10,106 (1) It shall be unlawful for any person,
21 including any carrier transporting nursery stock, to bring into
22 or cause to be brought into Nebraska any nursery stock unless such
23 shipment is plainly and legibly marked with a label showing the
24 name and address of the consignor and consignee, the nature and
25 quantity of the contents, the place of origin, and the license or
26 its equivalent issued by the recognized authorizing agency stating
27 that the nursery from which the nursery stock originates has been

1 inspected.

2 (2) It shall be unlawful for any person to distribute
3 in Nebraska nursery stock for the purpose of resale in Nebraska
4 without meeting the labeling criteria stated in this section.

5 (3) The requirements of this section shall not apply to
6 nursery stock distributed to the final consumer at a distribution
7 location where a valid ~~grower's or dealer's~~ nursery stock
8 distributor's license has been conspicuously posted.

9 (4) The department may cause to be held for inspection
10 any plants, regardless of proper labeling according to the Plant
11 Protection and Plant Pest Act, if there is reason to believe they
12 are infested or infected with plant pests. Such plants shall be
13 held only for a period of time reasonable for proper inspection and
14 any treatment deemed necessary by the department. The department
15 shall not be held responsible for costs incurred by treatment or
16 delay.

17 (5) In carrying out this section, the department may
18 intercept or detain any person or property including vehicles or
19 vessels reasonably believed to be carrying any plants or any other
20 articles capable of carrying plant pests. The department may hold
21 for treatment, destroy, or otherwise dispose of any plants, if
22 found infested or infected with plant pests, at the owner's cost.

23 Sec. 20. Section 2-10,111, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 2-10,111 All costs associated with a
26 ~~withdrawal-from-distribution order or the quarantine, treatment,~~
27 ~~or destruction of plants shall be incurred by the owner of such~~

1 ~~plants. The department shall not be liable for any actual or~~
2 ~~incidental costs incurred by any person due to such departmental~~
3 ~~actions. The department shall be reimbursed by the owner of such~~
4 ~~plants for the actual expenses incurred by it in carrying out a~~
5 ~~withdrawal-from-distribution order or the quarantine, treatment,~~
6 ~~or destruction of any plants.~~

7 (1) All costs associated with treating, seizing,
8 or destroying any plant or issuing and enforcing any
9 withdrawal-from-distribution order for any plant, which plant is in
10 violation of the Plant Protection and Plant Pest Act or the rules
11 and regulations adopted and promulgated pursuant to the act, shall
12 be the responsibility of the person in possession of the plant. The
13 department shall be reimbursed by the person in possession of the
14 plant for the actual cost incurred by the department in enforcing
15 the act or such rules and regulations.

16 (2) All costs related to enforcement of the act and such
17 rules and regulations shall be the responsibility of the person
18 violating the act. The department shall be reimbursed by persons
19 violating the act or such rules and regulations for the actual cost
20 incurred by the department in enforcing the act.

21 (3) The department shall not be liable for any costs
22 incurred by any person due to any departmental actions relating to
23 the enforcement of the act or such rules and regulations.

24 Sec. 21. Section 2-10,115, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 2-10,115 (1) Any person shall be guilty of a Class IV
27 misdemeanor for the first violation and a Class II misdemeanor for

1 any subsequent violation of the same nature and in violation of the
2 Plant Protection and Plant Pest Act if that person:

3 (a) Distributes nursery stock ~~and has not been duly~~
4 licensed without a nursery stock distributor license issued under
5 the Plant Protection and Plant Pest Act;

6 (b) Receives nursery stock for further distribution from
7 any person who has not been duly licensed or approved under the
8 act;

9 (c) Uses any license issued by the department after it
10 has been revoked or has expired, while the licensee was under
11 suspension, or for purposes other than those authorized by the act;

12 (d) Offers any hindrance or resistance to the department
13 in the carrying out of the act, including, but not limited to,
14 denying or concealing information or denying access to any property
15 relevant to the proper enforcement of the act;

16 (e) Allows any plant declared a nuisance plant as
17 outlined in section 2-10,107 to exist on such person's property or
18 distributes any such plants or materials capable of harboring plant
19 pests;

20 (f) Acts as a ~~grower, dealer, or broker~~ nursery stock
21 distributor and:

22 (i) Fails to comply with provisions for
23 treatment or destruction of nursery stock as required by
24 withdrawal-from-distribution orders;

25 (ii) Distributes any quarantined nursery stock or nursery
26 stock for which a withdrawal-from-distribution order has been
27 issued;

1 (iii) Distributes nursery stock for the purpose of
2 further distribution to any person in Nebraska not licensed as
3 a ~~grower or dealer~~, nursery stock distributor; or

4 (iv) Fails to pay all fees required by the act and the
5 rules and regulations;

6 (g) Distributes nursery stock which is not sound,
7 healthy, reasonably capable of growth, labeled correctly, and free
8 from injurious plant pests;

9 (h) Distributes plants which have been quarantined or are
10 in a quarantined area;

11 (i) Violates any item set forth as unlawful in section
12 2-10,106;

13 (j) Distributes biological control agents or genetically
14 engineered plant organisms without a permit if a permit is required
15 by the act;

16 (k) Fails to keep and make available for examination by
17 the department all books, papers, and other information necessary
18 for the enforcement of the act;

19 (l) Violates any order of the director after such order
20 has become final or upon termination of any review proceeding when
21 the order has been sustained by a court of law; or

22 (m) Violates any other provision of the Plant Protection
23 and Plant Pest Act.

24 (2) Any lot or shipment of plants not in compliance with
25 the Plant Protection and Plant Pest Act, the rules and regulations,
26 or both shall be subject to seizure on complaint of the department
27 to a court of competent jurisdiction in the county in which

1 such plants are located. If the court finds the plants to be in
2 violation of the act, the rules and regulations, or both and orders
3 the condemnation of the plants, such plants shall be disposed of
4 in any manner deemed necessary by the department. In no instance
5 shall the disposition of the plants be ordered by the court without
6 first giving the claimant an opportunity to apply to the court for
7 release of such plants or for permission to treat or relabel the
8 plants to bring such plants into compliance with the act, the rules
9 and regulations, or both.

10 (3) It shall be the duty of the Attorney General
11 or the county attorney of the county in which any violation
12 occurs or is about to occur, when notified by the department
13 of a violation or threatened violation, to pursue appropriate
14 proceedings without delay pursuant to this section, subdivision (6)
15 of section 2-1091, or subsection (3) of section 2-10,103.02 or any
16 combination thereof.

17 (4) Any person adversely affected by an order made by the
18 department pursuant to the Plant Protection and Plant Pest Act may
19 appeal such order, and the appeal shall be in accordance with the
20 Administrative Procedure Act.

21 Sec. 22. Original sections 2-1072, 2-1074, 2-1083,
22 2-1091, 2-1091.01, 2-1095, 2-10,102, 2-10,103, 2-10,103.01,
23 2-10,103.02, 2-10,103.04, 2-10,104, 2-10,105, 2-10,106, 2-10,111,
24 and 2-10,115, Reissue Revised Statutes of Nebraska, are repealed.

25 Sec. 23. The following sections are outright repealed:
26 Sections 2-1075.01, 2-1077, 2-1080, 2-1092, 2-1093, 2-1094,
27 2-1096, 2-1097, 2-1098, 2-1099, 2-10,100, 2-10,100.01, 2-10,100.02,

- 1 2-10,101, and 2-10,116.01, Reissue Revised Statutes of Nebraska.
- 2 2. On page 1, line 4, before "and" insert "2-10,111,".