

LEGISLATIVE BILL 253

Approved by the Governor May 14, 1981

Introduced by DeCamp, 40

AN ACT relating to litter; to amend section 28-523, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1536, 81-1541, 81-1542, 81-1549, 81-1551 to 81-1553, 81-1556 to 81-1561, 81-1563, 81-1565, and 81-1566, Revised Statutes Supplement, 1980; to change a penalty provision; to define and redefine terms; to change provisions relating to litter receptacles and fees; to provide a litter fee for certain retailers; to provide duties for the Department of Revenue; to provide a penalty; to eliminate a grant restriction; to change the termination date; to provide severability; to repeal the original sections, and also section 81-1564, Revised Statutes Supplement, 1980; and to declare an emergency. Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-523, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-523. (1) Any person who deposits, throws, discards, or otherwise disposes of any litter on any public or private property, or in any waters, commits the offense of littering unless:

(a) Such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property; or

(b) The litter is placed in a receptacle or container installed on such property for such purpose.

(2) The word litter as used in this section means shall mean all rubbish, refuse, waste material, garbage, trash, debris, or other foreign substances, solid or liquid, of every form, size, kind and description susceptible of being dropped, deposited, discarded, or otherwise disposed of by any person upon any property in the state, but does not include the waste wastes of or primary processes of farming or manufacturing. Waste material as used in this subsection shall mean any material appearing in a place or in a context not associated with that material's function or origin.

(3) Whenever litter is thrown, deposited, dropped, or dumped from any motor vehicle or watercraft in violation of this section, the operator of such motor vehicle or watercraft commits the offense of littering.

(4) Littering is a Class ~~IV~~ V misdemeanor.

Sec. 2. That section 81-1536, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1536. For purposes of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act, unless the context otherwise requires, the definitions found in sections 81-1537 to 81-1548 and sections 5 to 8 of this act shall be used.

Sec. 3. That section 81-1541, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1541. Litter shall mean all waste material susceptible to being dropped, deposited, discarded, or otherwise disposed of by any person upon any property in the state, but not including the ~~waste--or wastes of~~ primary processes of farming or manufacturing. Waste material as used in this section shall mean any material appearing in a place or in a context not associated with that material's function or origin.

Sec. 4. That section 81-1542, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1542. Manufacturer shall mean any person engaged in a business activity, in the state, ~~of--selling who has annual gross proceeds of at least three hundred fifty thousand dollars resulting from the sale of~~ tangible personal property which the person has made, produced, manufactured, processed, or fabricated which is within any of the categories listed in section 81-1560. ~~The-selling-of-meals,-food-products,-or-drinks-at--retail to-a-consumer-on-his-or-her-order--and--for--his--or--her immediate-consumption-shall-not-classify-the-seller-as--a manufacturer-by-reason-of-such-activity.~~

Sec. 5. Wholesaler shall mean any person engaged in business in this state who has annual gross proceeds of at least three hundred fifty thousand dollars resulting from sales at the wholesale level to retailers, other merchants, or industrial, institutional, and commercial users of any tangible personal property falling into any of the categories listed in section 81-1560 which is sold at the wholesale level.

Sec. 6. Retailer shall mean any person engaged in business in this state who has annual gross proceeds of at least three hundred fifty thousand dollars resulting from the sales of tangible personal property for storage, use, or other consumption or from the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption, of any of the products, including by-products, falling into the categories listed in section 17 of this act.

Sec. 7. Tangible personal property shall mean all tangible personal property except:

(1) Gas, electricity, and water delivered through mains, lines, pipes, or channels to purchasers;

(2) Food and food products for human or pet consumption sold in bulk form and not packaged or subpackaged in individual containers, packages, or units, or a type of size not suitable for sale to consumers purchasing in the ordinary course of retail marketing; and

(3) Fertilizer, seeds, annual plants, any form of animal life, and animal feed sold for resale or use in the agricultural food industry.

Sec. 8. Gross proceeds shall mean the total receipts from all sales less expenditures for the purchase of any item in this state for the purpose of recycling such item.

Sec. 9. That section 81-1549, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1549. In addition to other powers and duties, the council shall have the power to propose and to adopt rules and regulations necessary to carry out the provisions, purposes, and intent of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act.

Sec. 10. That section 81-1551, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1551. It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles are required by section 81-1550 to procure and place such receptacles at his or her own expense on the premises and to maintain the same in accord with rules and regulations adopted by the council. Any person who fails to place such litter receptacles on the premises in the numbers required or to

maintain such receptacles in the manner required shall be guilty of a Class V misdemeanor.

Sec. 11. That section 81-1552, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1552. (1) No person shall damage, deface, abuse, or misuse any litter receptacle not owned by him or her so as to interfere with its proper function or to detract from its proper appearance.

(2) No person shall deposit leaves, clippings, prunings, garden refuse, or household waste materials in any litter receptacle, except with the permission of the owner of such receptacle.

(3) Any person violating this section shall be guilty of a Class V misdemeanor.

Sec. 12. That section 81-1553, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1553. (1) In order to identify the litter problem more fully and to measure the progress made by the department, within ~~six~~ twelve months of October 1, 1979, the department shall conduct, or grant funds to enable public or private agencies to conduct, a survey measuring the amount and composition of litter on the public highways, recreation lands, and urban areas in the state. The department shall conduct, or grant funds to enable public or private agencies to conduct, follow-up surveys on a sufficiently regular basis to provide meaningful measurement of the amount and composition of litter and the rate of littering. The results of these surveys shall be reported to the Governor. The department shall not spend more than fifty thousand dollars from the fund to conduct the original survey required by this section.

(2) The department shall submit an annual progress report, relating to the purpose of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act, to the Governor and the Appropriations Committee of the Legislature.

Sec. 13. That section 81-1556, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1556. The director may designate trained employees of the department to enforce and administer sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act and all rules and regulations adopted pursuant to such sections. The director may contract

with other state and local governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act. All peace officers of this state or any political subdivision of this state shall enforce the provisions of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act and all rules and regulations adopted pursuant to such sections and are empowered to issue citations to any person violating any provision of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act in their presence.

Sec. 14. That section 81-1557, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1557. The penalties which may be imposed for littering in this state and any provisions of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act deemed appropriate by the department shall be posted along public highways of this state, at visitor centers, at the entrance to state parks and recreation areas, at public beaches, and at such other public places as the department determines is necessary to accomplish the purposes of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act.

Sec. 15. That section 81-1558, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1558. There is hereby created within the state treasury a fund to be known as the Nebraska Litter Reduction and Recycling Fund. The proceeds of the fee imposed by sections 81-1559 and 81-1560 and sections 16 and 17 of this act and money received by the department as gifts, donations, or contributions toward the goals stated in section 81-1535, as well as money received by the department for nonprofit activities concerning litter reduction and recycling, including, but not limited to, honoraria, literature furnished by the department, and funds realized as reimbursement for expenses in conducting educational forums, shall be transmitted to the State Treasurer for deposit in such fund to be used for the administration and enforcement of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act.

Sec. 16. (1) There is hereby imposed, on every person engaged in business within this state as a retailer selling products which fall within the categories enumerated in section 17 of this act, an annual litter fee equal to one hundred fifty dollars for

each one million dollars of gross proceeds of the sales which are consummated within this state except as provided in section 18 of this act. The litter fee provided by this section shall not be applied to gross proceeds of the sales of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, if the person performs only the growing or raising function of such animal, bird, or insect. Such annual litter fee shall be collected and administered by the Department of Revenue. The fee imposed by this section shall be due on or before January 15, 1982, based upon the gross proceeds of products manufactured or sales consummated within the state for the period from October 1, 1981, to December 31, 1981, on or before August 1, 1982, for products manufactured or sales consummated for the period from January 1, 1982, to June 30, 1982, and on or before October 1, 1983, and on or before October 1, each year thereafter, based upon the gross proceeds for the immediately preceding July 1 to June 30 period.

(2) After October 1, 1981, no retailer in this state shall sell any product which falls within the categories enumerated in section 17 of this act, without having first obtained a license issued in the same manner as permits issued pursuant to section 77-2705. Failure to obtain such license shall be a Class IV misdemeanor. Except as provided in section 18 of this act, any retailer who fails to pay the fee imposed pursuant to subsection (1) of this section may have such license revoked in the same manner as permits are revoked pursuant to section 77-2705.

Sec. 17. The fee imposed by section 16 of this act shall be calculated only on the gross proceeds of sales of products falling into the following categories: (1) Food, beverages, liquor, wine, and beer and other malt beverages, except those sold by retailers which are solely for consumption indoors on the seller's premises; and (2) groceries.

Sec. 18. Any person engaged in business as both a manufacturer and a retailer or a wholesaler and a retailer shall pay the fee either under section 81-1559 or section 16 of this act, whichever is greater. No person shall be required to pay a fee more than once on the same item or product under sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act.

Sec. 19. That section 81-1559, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1559. (1) To aid in defraying the cost of administration of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act, there shall be collected an annual litter fee equal to one hundred fifty dollars for each one million dollars of gross proceeds of products manufactured and the sales of which are consummated within this state, including by-products, in the case of manufacturers, and equal to one hundred fifty dollars for each one million dollars of the gross proceeds of the sales consummated within this state in the case of such sales--at--wholesale wholesalers. The litter fee provided by this section shall not be applied to gross proceeds of the sales of any animal, bird, or insect, or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, if the person performs only the growing or raising function of such animal, bird, or insect. Such fee shall be collected and administered by the Department of Revenue. The fee imposed by this section shall be due on or before January 15, 1980, based upon the gross proceeds of products manufactured or sales consummated within the state for the period from October 1, 1979 to December 31, 1979, on or before August 1, 1980, for products manufactured or sales consummated for the period from January 1, 1980, to June 30, 1980, and on or before October 1, 1981, and on or before October 1, each year thereafter, based upon the gross proceeds for the immediately preceding July 1 to June 30 period. The pertinent provisions, specifically including penalty provisions, of sections 77-2705 to 77-2710, 77-2712, 77-27,125 to 77-27,131, and 77-27,133 to 77-27,135, and sections 77-2711 and 77-2713, shall be applicable to the administration and collection of the fee imposed by this section.

(2) After October 1, 1979, no manufacturer or wholesaler in the state shall produce or sell any product pursuant to which falls within the categories enumerated in this section and section 81-1560 without having first obtained a license issued in the same manner as permits issued pursuant to section 77-2705. Any failure to obtain such license shall be a Class IV misdemeanor. Except as provided in section 18 of this act, any manufacturer or wholesaler who fails to pay the fee imposed pursuant to subsection (1) of this section may have such license revoked in the same manner as permits are revoked pursuant to section 77-2705.

Sec. 20. That section 81-1560, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1560. The fee imposed by section 81-1559 shall be calculated only on the value of products or the gross proceeds of sales of products falling which

directly contribute to litter as defined in section 81-1541 and which fall into the following categories: (1) Food for human or pet consumption; (2) groceries; (3) cigarettes and other tobacco products; (4) soft drinks and carbonated waters; (5) liquor, wine, and beer and other malt beverages; (6) household paper and paper products, excluding magazines, periodicals, newspapers, and literary works; (7) glass containers; (8) metal containers; (9) plastic or fiber containers made of synthetic material; and (10) cleaning agents and toiletries.

Sec. 21. That section 81-1561, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1561. The department shall allocate and distribute funds in percentage amounts to be determined by the council on an annual basis, after a public hearing on a date to be determined by the council, from the fund for the following activities:

(1) Programs of public education, motivation, and participation, aimed at creating an ethic conducive to the reduction of litter, establishing an attitude against littering and a desire for a clean environment, and securing greater awareness of and compliance with antilitter laws. Such programs shall include:

(a) The distribution of informative materials to elementary and secondary schools;

(b) The purchase and erection of roadside signs;

(c) The organization and operation of cleanup drives conducted by local agencies and organizations using volunteer help;

(d) Grants to state and local government units and agencies and private organizations for developing and conducting antilitter programs; and

(e) Any other public information method selected by the department, including the use of media;

(2) Cleanup of public highways, waterways, recreation lands, urban areas, and public places within the state, including but not limited to the following:

(a) Grants to cities and counties for payment of personnel employed in the pickup of litter;

(b) Grants for programs aimed at increasing the use of youth and unemployed persons in seasonal and

part-time litter pickup programs and to establish work release and other programs to carry out the purposes of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act;

(c) Grants to public and private agencies and persons to conduct surveys of amounts and composition of litter and rates of littering; and

(d) Grants to public and private agencies and persons for research and development in the fields of litter reduction, removal, and disposal, including the evaluation of behavioral science techniques in litter control and the development of new equipment, and to implement such research and development when appropriate; and

(3) New or improved community recycling and source separation programs, including but not limited to:

(a) Expansion of existing and creation of new community recycling centers;

(b) Expansion of existing and creation of new source separation programs;

(c) Research and evaluation of markets for the materials and products recovered in source separation and recycling programs; and

(d) Providing advice and assistance on matters relating to recycling and source separation including information and consultation on available technology, operating procedures, organizational arrangements, markets for materials and products recovered in recycling and source separation, transportation alternatives, and publicity techniques.

Sec. 22. That section 81-1563, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1563. The department shall require periodic reports to be filed by grant recipients to enable the department to review and follow up on actions taken by grant recipients to insure that the purposes of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act are being achieved.

Sec. 23. That section 81-1565, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1565. The department shall adopt guidelines for the determination of eligibility of public and

private agencies and persons to receive funds pursuant to sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act and the determination of qualification and suitability of plans submitted by such agencies and persons consistent with the purposes of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act.

Sec. 24. That section 81-1566, Revised Statutes Supplement, 1980, be amended to read as follows:

81-1566. Sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act shall terminate five-years-from-its-effective-date on June 30, 1986, unless extended by the Legislature. In order to determine whether such extension shall occur, the department shall review and evaluate the extent to which the purposes of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act have been and are being achieved, and the need for continuation of the program and requirements established by sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act. Such review and evaluation shall be completed at least six months prior to the date established by this section for termination of sections 81-1534 to 81-1566 and sections 5 to 8 and 16 to 18 of this act.

Sec. 25. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 26. That original section 28-523, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1536, 81-1541, 81-1542, 81-1549, 81-1551 to 81-1553, 81-1556 to 81-1561, 81-1563, 81-1565, and 81-1566, Revised Statutes Supplement, 1980, and also section 81-1564, Revised Statutes Supplement, 1980, are repealed.

Sec. 27. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.